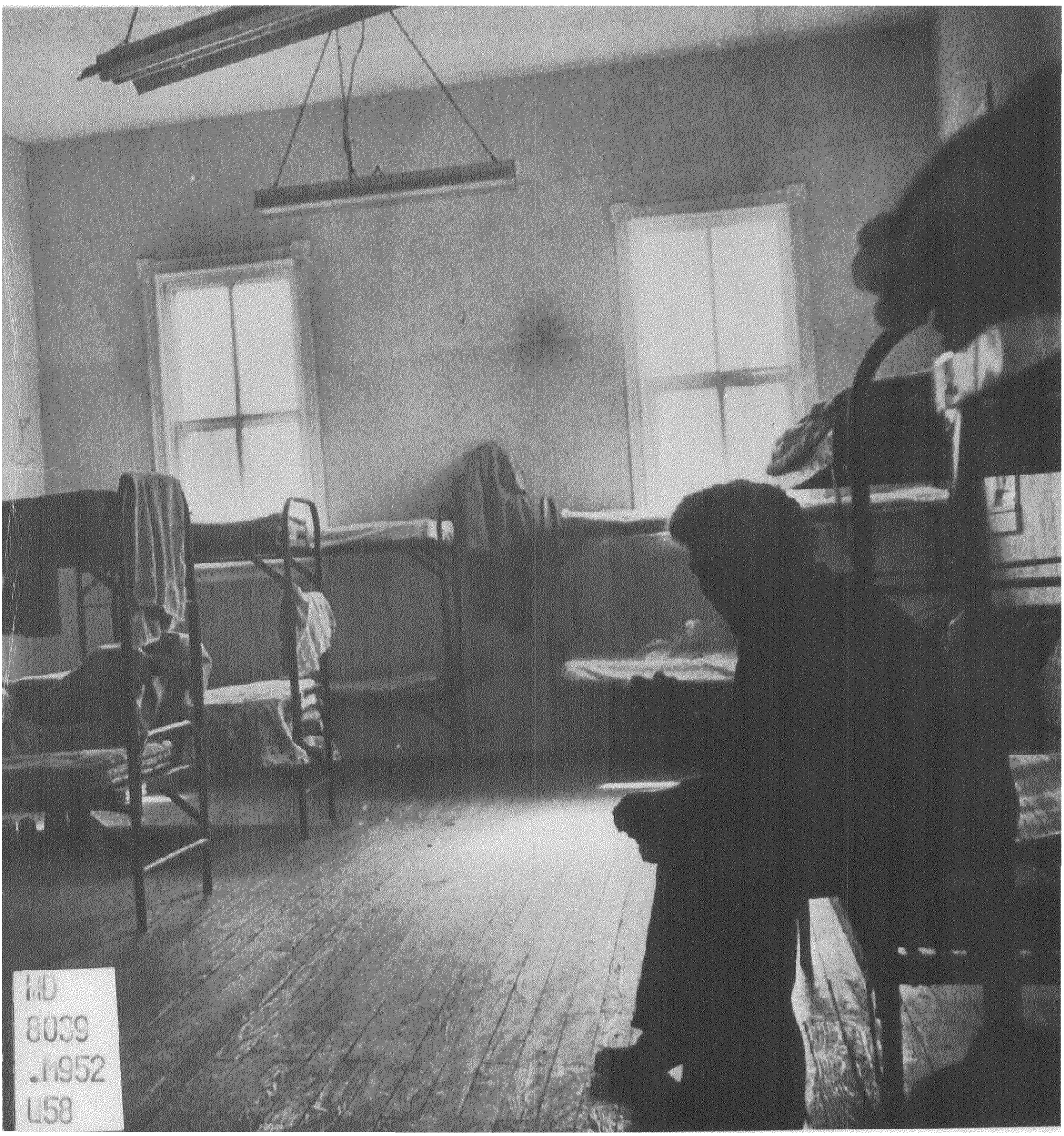
July 1977

The Working and Living Conditions of Mushroom Workers



—A report of the Delaware and Pennsylvania Advisory Committees to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the Delaware and Pennsylvania Advisory Committees.

The Working and Living Conditions of Mushroom Workers

—A report prepared by the Delaware and Pennsylvania Advisory Committees to the United States Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Delaware and Pennsylvania Advisory Committees to the United States Commission on Civil Rights and as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHT OF RESPONSE:

Prior to the publication of a report, the State Advisory Committees afford to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

DELAWARE AND PENNSYLVANIA ADVISORY COMMITTEES
TO THE U.S. COMMISSION ON CIVIL RIGHTS
July 1977

MEMBERS OF THE COMMISSION
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Stephen Horn, *Vice Chairperson*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

Sirs and Madam:

The Delaware and Pennsylvania Advsory Committees submit this report of their study of mushroom workers in Delaware and Pennsylvania as part of their responsibility to advise the Commission about civil rights problems within their States.

The basic issue which this report addresses is the unequal protection afforded under the laws of the United States and the laws of the States of Delaware and Pennsylvania. The mushroom workers, who are almost all Spanish speaking, are among the lowest-paid, worst-housed, and most medically impoverished groups in these States.

The Advisory Committees undertook the study of this problem when community groups informed the Committees regarding the working and living conditions of mushroom workers in both States. The Advisory Committees subsequently heard from mushroom workers, growers, community organization spokespersons, and Federal, State, and local representatives repsonsible for programs affecting workers.

During the 2-day open meeting in January 1976, the Committees examined the problem of defining mushroom workers, the exclusion of mushroom workers from the protection of State and Federal laws, the failure of governmental agencies to protect the rights of mushroom workers where laws do exist, and the exclusion of mushroom workers from government-supported benefit programs.

The Advisory Committees are proposing a number of recommendations to appropriate local, State, and Federal officials. It is the Advisory Committees' hope that the Commission will support these recommendations aimed at improving the working and living conditions of the mushroom workers and that the Commission will undertake indepth studies of the complex area of migrant workers, farmworkers, and illegal aliens.

Respectfully,

HOWARD H. BROWN, Chairperson
Delaware Advisory Committee

GRACE ALPERN, Chairperson
Pennsylvania Advisory Committee

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Stuart B. Young**
Wilmington

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*Member of the Mushroom Workers Study Subcommitee
**Appointed to the Delaware Advisory Committee after the open meeting

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*Member of the Mushroom Workers Study Subcommittee

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective State on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

ACKNOWLEDGMENTS

The Delaware and Pennsylvania Advisory Committee wish to thank the staff of the Commission's Mid-Atlantic Regional Office, Washington, D.C., for its help in the preparation of this report.

The investigation and report were the principal staff assignment of Armando Rodriguez and Wanda Hoffman, with writing and review assistance from Victoria Squier, Peter Peterson, Iver Stridiron, Robert Jeffers, and Carla Knapp, and support from Ruth Peete, Joann Harris, and Barbara Stafford. The project was undertaken under the overall supervision of Jacob Schlitt, director, Mid-Atlantic Regional Office.

Final production of the report was the responsibility of Vivian Hauser, Audree Holton, Rita Higgins, Deborah Harrison, and Vivian Washington, under the supervision of Bobby Wortman, in the Commission's Publications Support Center, Office of Management.

NOTE

Testimony referred to throughout the text was taken from statements made to the Delaware and Pennsylvania Advisory Committees to the U.S. Commission on Civil Rights at their open meeting in West Chester, Pennsylvania, January 22 and 23, 1976, as recorded in the transcript of that meeting. The transcript is on file with the U.S. Commission on Civil Rights, Washington, D.C., and with the Commission's Mid-Atlantic Regional Office, Washington, D.C.

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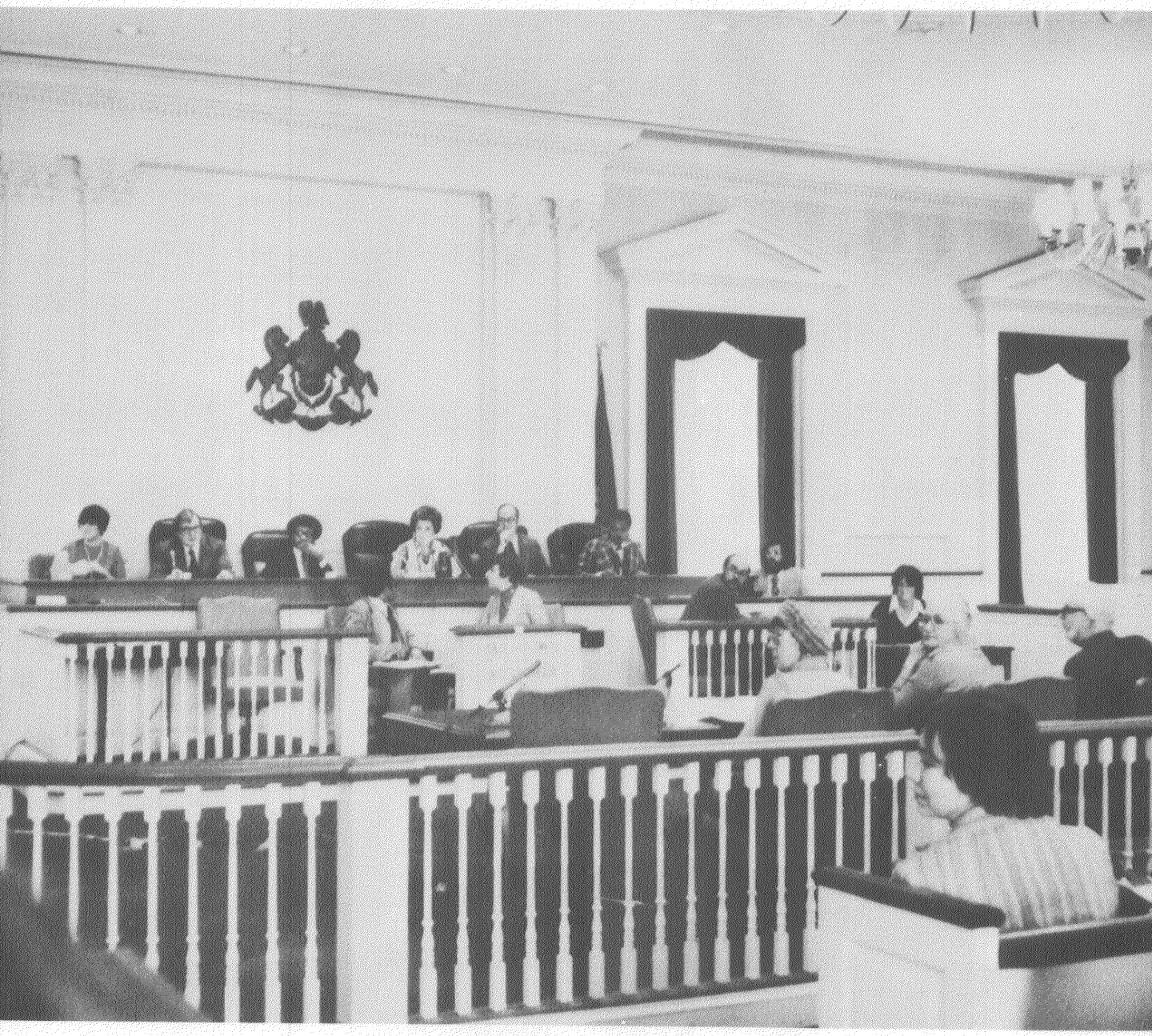


1. Introduction

From the outside, the blocky white building on the hilltop looks like a lot of Pennsylvania farmhouses in frayed condition.

Inside, where eight Spanish-speaking mushroom workers make their "permanent" home, it is a slum.

In one tiny bedroom, four iron bunks are jammed with barely enough space for the occupants to move. The room's window, a storm sash and inner heater is connected to a ragged, exposed wire.

The third floor is an attic with one window at a far end. It, too, is a bedroom but it is so dark in the winter afternoon that it is impossible to see the number of bunks.

*To get to the attic bedroom, one climbs a narrow circular stairway. It is the only exit***.*

****Besides crowding, broken windows and bad wiring, the scene also included raunchy mattresses, a toilet with no seat, filth-blackened toilet bowls, showers that didn't work and a pervasive odor of stale urine***.*

A crew leader in charge of 100 men can make $100,000 a year, said the Chester County branch of the American Civil Liberties Union. He does it by being a sort of one-man company store.

Most crew leaders are Puerto Rican. They hire workers for the grower. Since many of the growers don't speak Spanish, they deal with their employees through the crew leader.

Most of the workers are very poor, so they rely for transportation mostly on the crew leader. If the mushroom house is some distance away, he provides a bus.

Immobility makes the workers dependent in other ways. The crew leader provides their food. A Puerto Rican mushroom picker living in the white farmhouse, who said he was earning $1.90 an hour, paid $25 a week for his meals.

*The meals are cooked and served, usually, at the bunkhouse. The crew leader also provides beer and liquor to the extent of inducing alcoholism in some cases, observers say***.*

The Chester County ACLU calls the crew leader system "20th Century slavery." The chapter adds:

Interviews with workers and talkative crew leaders reveal the extent of their power. For services to the owners, crew leaders receive about 10 cents per hour per worker.

*Beer and liquor are sold illegally by all crew leaders to 100-150 percent markup. Charges against the worker are also levied for worker transportation, [and] the use of mattresses***.*

In addition, there is the weekly numbers game run and operated by crew leaders for their benefit and interest charges levied on all liquor and monetary advances.

The above was reported by Harry G. Toland of the *Evening Bulletin* of Philadelphia, Pennsylvania, February 2, 1976. Members of the Pennsylvania and Delaware Advisory Committes to the U.S. Commission on Civil Rights observed similar conditions. During the course of their investigation, they conducted interviews with workers, crew leaders, and growers; visited mushroom houses, housing for the workers, and mushroom processing plants; sent questionnaires to and interviewed Federal, State, and local agency officials. On January 22 and 23, 1976, an open meeting was held in Chester County, Pennsylvania, to obtain more data on the working and living conditions of the mushroom workers. This report contains the Advisory Committees' findings, conclusions, and recommendations. It is their hope that this report will help stimulate the action necessary to resolve the problems mushroom workers confront daily.

2. The Industry

Mushroom Production

The consumption of mushrooms in the United States has been increasing steadily for the last several decades. According to the American Mushroom Institute (AMI) of Kennett Square, Pennsylvania, total U.S. consumption of mushrooms has risen from 38 million pounds in 1930 to 383 million pounds in 1974–75. Most of the mushrooms produced in the United States are grown in a small geographic area.

Pennsylvania has 56 percent of the total area in production, followed by California with 11 percent and Ohio, Michigan, New York, and Delaware. The majority of the growers in Pennsylvania are located in Chester County, and the majority of the growers in Delaware, in neighboring New Castle County.

This small area in southeastern Pennsylvania calls itself the "mushroom center of the world" and produces Pennsylvania's largest agricultural cash crop.

In 1975, there were approximately 500 commercial growers in the United States, about 30 percent fewer than a decade earlier. For commercial production, the reduction in the number of growers since 1970 has been accompanied by an increase in area cultivated and in average yield.

There are no precise figures on the size of the industry in Chester and New Castle Counties. AMI Executive Director Timothy A. King estimated that there are approximately 200 to 300 growers in Chester County and about 25 to 50 in New Castle County.

The industry was hard hit by recalls in 1973–74, and as a result, the Small Business Administration was authorized by the President to allocate $15 million in low-interest economic injury loans. SBA loaned, according to Mr. King, $4.5 to $5 million to the industry. Loans and grants are also available to the industry because of the economic plight it claims to be suffering owing to foreign competition. The industry was also hopeful of getting a tariff rate quota enacted to reduce imports of

mushrooms. However, the U.S. International Trade Commission recommended that adjustment assistance would be a more appropriate remedy. (Growers and processors in the mushroom industry currently may submit petitions for certification to apply for adjustment assistance from the U.S. Department of Commerce.)

Representative Richard T. Schulze and Senator Hugh Scott introduced legislation in July 1976 to impose quantitative limitations on the importation of mushrooms into the U.S. They charged that imports now account for 40 percent of the processed mushroom market, where they were nonexistent a decade ago.

The Product

Mushrooms are grown on prepared compost, a substance composed of well-watered synthetic or organic materials, which must undergo outdoor composting and indoor pasteurization. They can be grown year round provided that the temperature in the growing house is maintained at 55 degrees Fahrenheit[1] and the relative humidity is maintained at 80 percent. The need for a dark, damp, cold environment restricts adequate lighting and ventilation for workers.[2]

Pest control is an integral part of mushroom production. Pesticides are applied to growing beds in fog, aerial, dust, or liquid form, and specific pesticide guidelines for mushroom production are published by the Cooperative Extension Service at Pennsylvania State University.

The minimum commercial growing area for mushrooms is 20,000 square feet. The cost of building and equipping a mushroom house of this size is approximately $50,000, plus $10,000 for working capital to cover the cost of compost, spawn, and labor needed to prepare the beds before salable mushrooms are obtained. Labor costs are approximately 40 percent of production costs, including the operation of composting, filling, spawning, casing, picking, and packing.

The current expenditure for producing 1 pound of mushrooms is 25 to 35 cents. Mushrooms currently sell for approximately 26 to 64 cents per pound wholesale. About one-third of all mushrooms grown are marketed fresh; one-third, canned; and one-third, as soup.

Unlike green plants, mushrooms can not make their own food. They have no chlorophyl and, therefore, must grow on organic matter. Seeds are spores that develop into threadlike masses—mycelium—that develop into mushrooms.

Nine of the 14 spawn labs in the U.S. producing mycelium culture are in Pennsylvania. Most growers purchase spawn from spawn labs. Spawn is grown in filled beds inside mushroom houses in prepared compost, either manure or synthetic. Compost pasteurization requires 140 degrees heat for 4 hours. When the temperature is lowered to 70–75 degrees, spawn is added. After a few weeks, a soil layer, called casing, is added.

It takes 3 weeks of growing time before mushrooms start appearing. This continues for 2 to 3 months at intervals called flushes or breaks of 10 days, gradually decreasing. After mushrooms or mushroom clumps are picked, the remaining tissue is removed, and the hole left by the removal is filled with fresh soil.

The American Mushroom Institute

Timothy King, executive director of AMI, told the Advisory Committees that the primary purpose of the institute is to promote the consumption of mushrooms. It also promotes research to improve methods of mushroom growing, seeks government support for growers, and supports governmental and private studies related to the mushroom industry. It is an association of mushroom growers with an annual budget of $120,000. Approximately 70–80 percent of the growers in Chester and New Castle Counties are members of AMI.

Notes to Section 2

1. Commenting on the draft report, Timothy A. King, Executive Director, American Mushroom Institute, said: "Growing houses are more normally maintained at a comfortable 60 degrees, not 55***." Letter to Jacob Schlitt, Director, Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, Nov. 4, 1976.

2. AMI's Timothy King commented: "In order for mushrooms to grow, they need continuously changing fresh air so ventiliation is probably better than 'average'." Ibid.

3. Defining the Mushroom Workers

The first problem the Advisory Committees faced in their study was the absence of a consistent definition of mushroom workers. There is no agreed-upon term. They are referred to as migrants, staygrants, agricultural workers, industrial workers, day-haul workers, seasonal farmworkers, settled-out migrant workers, food processors, migrant food processors, mushroom industry workers, industrial workers in food processing, and farm laborers. Furthermore, the terms are variously defined not only within Federal and State statutes but also at different levels of implementation of the laws.

Representatives of the Pennsylvania Department of Health and Department of Education told the Advisory Committees that neither the Federal Government nor the Commonwealth of Pennsylvania has a uniform definition for mushroom workers. The departments operate under different definitions, although both receive funds from the Department of Health, Education, and Welfare. They explained that this pattern is repeated within programs funded and operated by the State of Pennsylvania.

Witnesses appearing at the open meeting had wide-ranging views of the definition of mushroom workers. AMI Executive Director Timothy King said that mushroom workers are frequently referred to as migrant workers, but the AMI considers them agricultural workers. He observed that some mushroom workers travel throughout the mushroom-growing area, while other workers stay with the same employer year after year.

On the other hand, Leebert Logan, chairman of the Chester County Migrant Ministry Committee in West Chester, Pennsylvania, stated that mushroom workers fit the Federal definition of migrant worker:

> The Federal definition is "one that has moved from one school district to another and is engaged in agriculture,"***within the period of 1 year. That, I understand, the Federal Government is now going to change to 5 years.
>
> So, it means that even if they have been here from Puerto Rico, for example, or Mexico, for a period of time, if they move from one school district to another by changing jobs they're migrants on that basis.

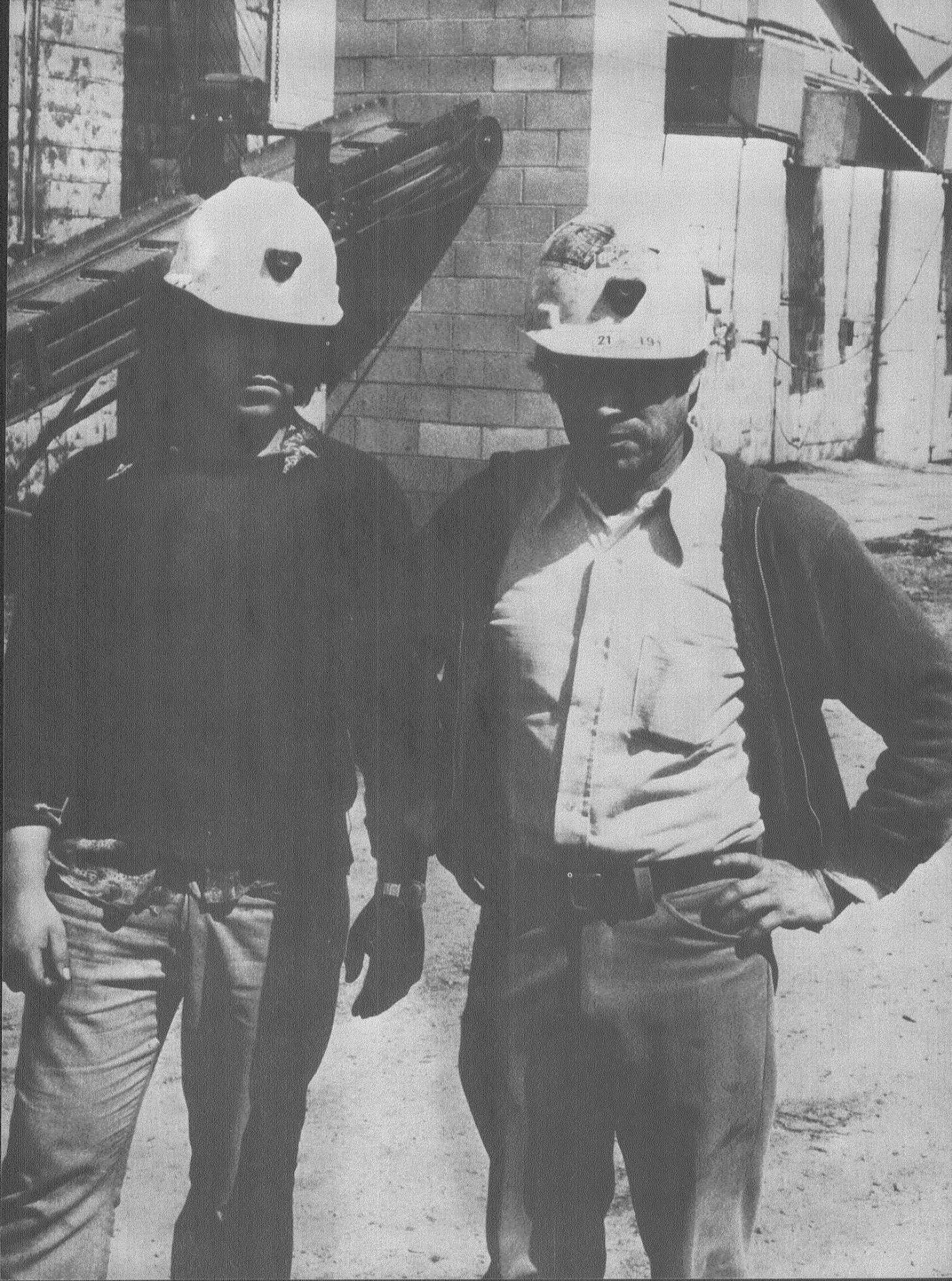
Mushroom workers who have been employed in mushroom growing for several years, and intend to remain in the full-time employment of mushroom growers, have sometimes been referred to as "staygrants"—former migrants who have decided to stay. However, under Title I of the Elementary and Secondary Education Act [20 U.S.C. §241e(c)], mushroom workers' children can be defined as migrants, and therefore as eligible to participate in special education programs for migratory agricultural workers even if the family has settled in one place for *5 years*. If the parents have moved from one school district to another within that period to work in agriculture or related food processing activities, the children are eligible. Therefore, while mushroom workers may not be considered migrants, the U.S. Office of Education may consider the children of such workers migrants.

Mushroom workers are sometimes considered "seasonal" workers because mushrooms have to be picked when they are ready for marketing. However, picking is an ongoing activity.

Berardo Rosario, who works with mushroom workers through the Council on Addictive Diseases in West Chester, suggested that mushroom workers are "industrial" workers, since mushrooms are grown "all year round where they can control the temperature in the houses."

Leon Binder, monitor/advocate in the division of employment services, Delaware Department of Labor, believes that the division's outreach programs for both migrant and seasonal workers would cover mushroom workers.

Franklin Wanamaker, monitor/advocate, U.S. Department of Labor, is of the opinion that the definitions are consistent within the U.S. Department of Labor, but "for dealing with other agencies, no, there are lots of inconsistencies."



Ted Jacobs, employment counselor for Chester County manpower programs, stated that mushroom workers or members of their families have received the services provided by the manpower programs because they have been considered migrant workers: "We consider them migrant workers because it helps us to service them under the law even if they may be a few months removed from being a migrant worker."

Sherwood Guernsey, an attorney with the Legal Aid Society of Chester County, stated that he does not understand the basis for maintaining that mushroom workers are not industrial workers. According to him, they are certainly not farmworkers.

William J. Atkinson, Pennsylvania State Deputy Attorney General, testified that there are times when various terms are appropriate, but he hoped that some solution might be worked out so that all workers would be treated as uniformly as possible.

The Advisory Committees heard extensive testimony illustrating that there is no generally-agreed-upon definition of mushroom workers at either the Federal or State levels of government. Since protection of their rights, as well as equity in receiving services, is dependent upon the definition, it becomes all-important.

An equally difficult problem was determining the size and composition of the work force by sex, race, and age. There are no accurate statistics for mushroom workers. The American Mushroom Institute could only guess the number based on the total square feet of mushrooms planted. The formula they use is one picker for each 8,000 square feet. Estimates of mushroom workers in southeastern Pennsylvania range from 2,000 to 3,000 workers and in northern Delaware from 300 to 350 workers. Testimony received at the open meeting indicated that no State or Federal agency has direct responsibility for determining the race, sex, or number of mushroom workers.

Based on observation, it appears that the largest percentage of workers in the mushroom houses are young, male, single, and Latino. (The majority of persons working in the canneries are white females.) There are few blacks in either mushroom houses or canneries. The few who are work as fillers or cleaners of the mushroom houses.

Workers in the mushroom industry not only must cope with a definitional dilemma but also with the absence of accurate statistics. The conditions they endure are in part related to these facts.

4. Working Conditions

Angel Dominguez, who spent 3 months working on the American Friends Service Committee (AFSC) study of seasonal farm labor in Pennsylvania, described working conditions for mushroom workers as "terrible, like working in a dark mine, cutting with a knife, 10 to 15 hours a day. I think the people working there for years are dead, working dead."

In Chester and New Castle Counties, mushrooms are grown in dark, humid, cold buildings. The mushrooms are grown in tiers of soil (beds), with approximately 6 feet between the tiers, which stretch across the width of the house. There are usually four rows of tiers with approximately 3 feet between rows. To reach the upper-level beds, workers must walk along catwalks. The pickers move along the beds, pulling the mushrooms out of the soil and in some cases cutting the stems off as they go. They drop the mushrooms into baskets with two compartments: one for the mushrooms, the other for the stems. The wide beds require bending and stretching to reach the mushrooms. Since mushrooms mature at different rates, the pickers must determine if they have reached the proper stage of development as they move along the bed. Workers usually wear hardhats equipped with a light, like miners' hats, but they seldom wear other protective clothing.

Protective Legislation

When considered farmworkers, mushroom workers are excluded from Federal protection such as the right to organize and bargain collectively, industrial minimum wage laws, unemployment compensation (except for a special temporary program), and legislation prohibiting discrimination in employment.

Because of the past neglect of farmworkers, the U.S. Employment Service is under court order to provide them with services comparable to those given other job applicants. Legislation, on the other hand, has done little to alter the pattern of exploitation by crew leaders, a subject discussed later in this report. Most observers concerned about conditions in the mushroom industry believe mushroom workers should have the same protections and benefits now available as a matter of course to industrial workers.

The Right to Organize

The efforts of the United Farm Workers (UFW)-AFL–CIO have received national attention and considerable support in Pennsylvania. But UFW organizing has been concentrated in California and, to a lesser degree, in Florida and Texas. There have been limited attempts to organize agricultural workers in Pennsylvania. Local 1034 of the Retail, Wholesale and Department Store Union (RWDSU), AFL–CIO, and Local 15–B of the International Union of Operating Engineers (IUOE), AFL–CIO, represent some mushroom workers in the Chester County area. An east coast farmworkers organization, Asociacion de Trabajadores Agricultura (ATA) (Association of Agricultural Workers), which has been active among tobacco workers in Connecticut, hopes to extend its activities to mushroom workers. It claims to have 6,000 members and merged with UFW in July 1976.

Local 1034, RWDSU, represents the workers of Grocery Store Products, the largest mushroom grower in the area. The Advisory Committees were provided with copies of their collective bargaining agreement and representatives of the employer and the union participated in the open meeting.

According to the local's president, Albert L. Meloni, the local has 1,100–1,200 mushroom workers, but most of them are hourly-paid production and maintenance employees in the cannery or manufacturing plant. The employees in the mushroom-growing division include machine operators, maintenance workers, and haulers, as well as workers involved in contract jobs such as filling, spawning, casing, washing, and cleaning.

Mr. Meloni told the Advisory Committees that the contract calls for a $3.00 an hour minimum for mushroom pickers. The Committees noted that there is a general help (mushroom pickers) job classification with a wage rate that ranges from $2.77 to $3.35 per hour.[1]

Two full-time business agents for Local 1034, both women, one black, service the mushroom units out of a West Chester office. Mr. Meloni explained that a majority of the workers represented by the union are women who work in the canneries.

A long-standing concern is the language gap in the union. It was alleged that the Spanish-speaking pickers are not being adequately represented and that membership meetings, other than during negotiations, have been virtually nonexistent—though Mr. Meloni says they are held quarterly.

Under Local 1034's contract, workers work a 6-day, 54-hour week, get up to 5 weeks' vacation after 20 years, and 8 paid holidays. Also provided are health insurance, including hospitalization, and sick benefits; life insurance; night shift differential; seniority; work guarantees; and safety inspection. Negotiated in the last contract was the posting of notices in Spanish and English. Members pay $1.50 to $2.00 a week in dues and there is a union-shop provision.

Lynn W. Rickart, manager of growing for Grocery Store Products, told the Advisory Committees that 24 to 25 percent of their payroll was fringe benefits, including 7.5 percent social security. The other growers at the open meeting estimated their fringe benefit payments as 7 to 8 percent.

Little is known about Local 15–B, IUOE, with headquarters in New York City. It is believed to represent about 75–100 mushroom pickers, in addition to cannery workers, at Oxford Royal. According to a newspaper interview with Thomas A. Maguire, president of the local, it represents workers who remove manure from racetracks that is bought by Oxford Royal, thus the local's interest in mushroom workers. A new contract, said Mr. Maguire, gives workers $2.30 an hour and some paid holidays, but no pension or welfare benefits.

Mr. Meloni said the contract with Local 15–B suddenly appeared when Local 1034 attempted to organize the workers at Oxford Royal. The Advisory Committees' efforts to make contact with the local proved fruitless. The local was called on January 14, 1976, by staff of the Advisory Committees. The local's office manager referred the caller to the union's attorney. Letters to the attorneys dated January 19, 1976, and July 6, 1976, went unanswered, as did a letter to the local on October 14, 1976.

Both the National Labor Relations Act (NLRA) and the Pennsylvania Labor Relations Act (PLRA) exclude agricultural labor from coverage. Individuals and organizations concerned with the rights of farmworkers in Pennsylvania have urged that agricultural labor be covered by the Pennsylvania Labor Relations Act. Legislation to that effect (H.B. 1198 and S.B. 208) was introduced in the 1976 session of the Pennsylvania legislature.[2]

The Employment Service and the State Monitor/Advocate

In Pennsylvania, the Department of Labor and Industry through its Bureau of Employment Security (BES), a part of the United States Employment Service (USES), has major responsibility for the recruitment of farmworkers. In Delaware this responsibility rests with the Division of Employment Services, Delaware Department of Labor.

> In the spring of 1971, 16 organizations and 398 individuals filed an administrative complaint accusing the rural manpower services of State employment security agencies of exploiting migrant farmworkers. As a result, on April 21, 1972, then Secretary of Labor James D. Hodgson issued a memorandum to three of his assistant secretaries requiring them to take certain actions related to farmworkers. This memorandum became known as "the Secretary's 13 Points."
>
> In October 1972, substantially the same group sued the Department of Labor (DOL) in the case known as *NAACP v. Brennan*. The U.S. district court ruled in May 1973, on the basis of facts conceded by the Department of Labor, that both the Department and State employment service officials had violated various laws. The Department was enjoined against permitting or perpetuating discrimination and other unlawful practices. Judge Charles Richey directed that DOL implement fully the Secretary's 13 points. One month later, DOL was directed by the court to establish an effective complaint and monitor-

ing system, with sanctions and other remedial measures, to ensure State and DOL compliance with the court order. When this too proved ineffective, Judge Richey on August 9, 1974, signed a consent order negotiated by the parties to the suit that required DOL officials to take specific actions to provide equitable services, benefits, and protections to migrant and seasonal workers.[3]

The court order was transmitted by the Department of Labor to all State employment security agencies on September 26, 1974, with instructions that copies be transmitted to each local office. It was not, however, until October 15, 1975, that the Manpower Administration of the Department of Labor transmitted to State offices a consolidated, comprehensive set of guidelines and interpretations for implementing the court order (DOL General Administration Letter No. 10–75.)

Each regional office of the Department of Labor has a monitor/advocate, as does each State employment service. The monitor/advocate in each State is responsible for ensuring compliance with all the provisions of the court order and for seeing that complaints are effectively resolved. Overall responsibility, however, rests with the administrator of the State agency.

In Pennsylvania and Delaware, as in most other States, the monitor/advocate has been drawn from within the employment service. Perhaps because of this, and the fact that few monitor/advocates have personal experience as migrant or seasonal farmworkers or are minority people, the plaintiffs have been dissatisfied with the performance of this system. In November 1975 the Special Review Committee, with the DOL abstaining, recommended to the court that the monitor/advocate system be independent, rather than function through the employees of the very service it is responsible for monitoring and changing.[4] However, the monitor/advocate system was negotiated and agreed to by both plaintiffs and defendants prior to Judge Richey's August 1974 order. Counsel for both sides must first attempt to agree upon changes in the system; failing resolution, they may turn to the court for a ruling.

It should be emphasized that employment service personnel, in addition to referring people to jobs, are responsible for informing mushroom workers of other resources that are available, such as food stamps and employment compensation, and for reporting complaints of violations of either State or Federal law.

The Advisory Committees were told that the employment service is almost irrelevant to the recruitment of mushroom workers. Some of the employers interviewed stated that they did not use the employment service because they found the regulations onerous. Others doubted that the employment service would provide workers when they were needed.[5] The uncertain availability of local (non-Latino) workers was a major reason cited for recruitment of out-of-State labor. The prevailing pattern is for employers to recruit through informal channels, generally through contact with crew leaders with whom they have dealt in the past.

A number of growers stated that they preferred "staygrants" (Latinos) to local people because they could not be sure that local people would be available or that they would be willing to work the same hours and for the same wages.

The Advisory Committees found few mushroom workers who had recent contact with the employment service or who looked upon that agency as a resource. Prior to the successful conclusion of major litigation,[6] the employment service did not provide mushroom workers and other agricultural workers with services comparable to those given others. Prospective employees hear about jobs through word of mouth. Growers tell their workers that they need help and, according to one witness, they "bring their brothers or cousins there to interview for the job."

In June 1975 the largest grower in the area, Grocery Store Products, Inc., did use the services of the bureau of employment security in Coatesville. According to Mr. Rickard:

> They gave us permission to go to the Texas Employment Commission in El Paso, Texas, and recruit through the Texas Employment Commission, which we did. He brought 23 or 24 laborers up from El Paso on a bus.

The employment service is required to make random field checks, after any referrals, to determine that employers and crew leaders are conforming to the terms of the job order. This applies to both interstate and intrastate recruitment.

Crew leaders are now required by the Federal Labor Contractor Registration Act to notify local employment service offices when they arrive in a

new area. Even though most crew leaders in Pennsylvania and Delaware have no dealings with the employment service, random field checks should be made. However, mushroom workers are considered neither migrant nor seasonal farmworkers by the employment service and apparently do not qualify.

Wage Rates

Judy Vidal, founder of Esperanza, a Wilmington self-help organization for the Spanish-speaking, told the open meeting she thought low wages was one of the principal problems to be addressed:

> One family I know lived there [a Delaware mushroom camp] for 7 years, and the man began at $1.75 an hour and at the end of 7 years he was getting $2.00 an hour. He was not guaranteed any minimum or maximum hours a week.

A panel of four growers employing approximately 25 percent of all the mushroom workers in Chester County testified that they paid $2.25 to $2.40 an hour base rate. The Kennett Square operation of Grocery Store Products Company paid $2.57 an hour, and the West Chester operation paid $3.05 an hour. Both have contracts with Local 1034, RWDSU.

The overwhelming majority of mushroom pickers have no say in determining the terms and conditions under which they work. In addition, protective legislation applicable to workers in other industries is not applicable to workers in the mushroom industry. The provisions of the minimum wage laws of Pennsylvania and Delaware exclude agricultural workers outright, as do the child labor laws.

Federal fair labor standards, which apply to many agricultural workers, including mushroom workers, provide a lower minimum wage than that guaranteed for other workers. The Fair Labor Standards Act (FLSA), originally adopted in 1937, has been amended over the years to broaden coverage and raise the minimum wage. Farmworkers were first included in 1967, and in 1974 the FLSA amendments provided for bringing farmworkers and other previously exempted workers to parity with other workers by 1978. The relationship between the FLSA's basic minimum wage and the wage for workers brought under the act in 1967 and "eligible" agricultural workers is shown in table I.

The FLSA exempts from coverage growers who employed fewer than 500 man-days of farm labor in each quarter of the preceding calendar year and daily-commuting, hand-harvest workers paid at piece rates who did such work for fewer than 13 weeks in the preceding calendar year. As a result, there is no minimum wage protection for those working on small farms or for short periods, the condition of many mushroom workers.

In its discussion of wages, the *Pennsylvania Farm Labor Plan*, prepared by the Pennsylvania Farm Labor Project of the American Friends Service Committee, observed:

> Opponents of [minimum] standards have claimed over the years that the standards reduce employment by eliminating submarginal jobs. Yet a series of careful studies by the Department of Labor have provided no substantiation for this charge; the minimum wage has in fact been one of the most effective means of raising income for people employed in traditionally low-wage jobs. We know of no evidence that growers and agribusiness concerns are harder pressed to comply with minimum-wage and related legislation than other interests have been. There is certainly no evidence that agricultural workers need less protection than other workers do.
>
> There is no rational basis for the distinction. While the issue seems not to have been tested in court, we believe that legislation placing farmworkers on an equal footing in this area—as in other fundamental areas—is constitutionally required, since without it they are denied equal protection of the laws in every meaningful sense of the phrase.
>
> The need, however, is not simply to protect farmworkers and others equally, but also to attend to several problems uniquely incident to farm labor.
>
> First, while nominal wages on an hourly basis were most often at or above the FLSA level, actual earnings of $2.00 per hour were the exception rather than the rule. Piece rates often failed to yield that amount. "Deductions" by or for the benefit of crew leaders, often in a questionable or clearly illegal context, were also common.
>
> A second problem is the "bonus" system***.The "bonus" may be a portion of hourly or piece rate wages, but it is usually used in conjunction with the piece rate system. Essentially, the workers are paid a

certain amount per unit of work, with a further amount per unit payable at "the end of the season" or at "the completion of the harvest." Growers consistently claim that this method of payment is necessary to ensure workers at the end of the year. This is true where piece rates are paid, often enough, since pickings are thin toward the end of the harvest, and since workers with families from other States or elsewhere in Pennsylvania must begin to think about getting children back into school. Yet this is not a true "bonus," for it in no way reflects profits or high quality of work. It is simply a deferral of wages, from which workers are theoretically protected by the Pennsylvania Wage Payment and Collection Law.

Unemployment Compensation

The plan, which was prepared for the Interdepartmental Council on Seasonal Farmworkers and the Pennsylvania Department of Community Affairs, also commented on the absence of unemployment compensation coverage:

> With the exception of an emergency, temporary and, where farmworkers are concerned, ineffective federal Special Unemployment Assistance (SUA) program, enacted in February 1975, farmworkers are not covered by unemployment compensation either in Pennsylvania or most other States. Only Hawaii, Puerto Rico and Washington, D.C. now provide coverage for farmworkers.
>
> The Emergency Jobs and Unemployment Assistance Act of 1975 applies to states with high rates of unemployment—Pennsylvania is one. In addition to the SUA program, the law extends unemployment compensation benefits for workers who would otherwise have exhausted them. SUA covers people otherwise excluded under whatever terms the state law provides. Principal beneficiaries from SUA are state and local government employees, domestic servants, and farmworkers.
>
> We were unable to obtain information on the number of farmworkers who have applied for or received SUA in Pennsylvania, as separate records are apparently not kept for farmworkers***.
>
> Periodically, Congress has considered extension of unemployment compensation to farmworkers, and it is doing so again. In 1975, the Subcommittee on Unemployment Compensation of the House Ways and Means Committee completed comprehensive hearings on the coverage, financing, benefit standards, triggers and other basic components of unemployment compensation. Part of this consideration includes coverage of agricultural employers who paid more than $1,500 in wages to farmworkers during any quarter of the preceding year or who employed one of more farmworkers during 20 different weeks in the preceding year***

Our project staff found this summer that few farmworkers knew of the availability of special unemployment assistance and few, upon hearing of it, felt it would be worth the effort and the anticipated indignity of applying. Yet we found also a pattern of sporadic work: inclement weather when no one worked; early arrival before crops were ripe; waits between crops. Clearly, what is needed is a workable system under which farmworkers can receive unemployment compensation even during very short intervals of joblessness. Significantly, SUA regulations define a week of "total unemployment" as a week in which an individual performs no work and earns no wages *or has less than full-time work and earns not more than the earnings allowance prescribed in the applicable State law.* (20 CFR 619.2(u), emphasis ours.) SUA regulations also provide that they be construed liberally, and they permit determining eligibility for entitlement on the basis of affidavits where records are not available, as they often are not in the case of farmworkers. (20 CFR 169.1 and 619.8(a)(2).)

Social Security

Finally, on the subject of social security, the *Pennsylvania Farm Labor Plan* noted:

> There is ambiguity in federal laws concerning responsibility for Social Security deductions. The Federal Crew Leader Registration Act makes the grower accountable for payroll and record-keeping, but the Social Security Administration finds the crew leader responsible, unless there is a written agreement stating that the grower is the employer. Moreover, where the crew leader is legally responsible, even if she/he cannot be found, the worker's earnings, once reported, will be recorded whether or not they have actually been deducted and paid in.
>
> We note that, in the case of day haul people, it may well be an advantage to have the crew leader considered the employer by the Social Security Administration, since the pattern of day haul recruitment is such that people are more likely to spend 20 days or earn $150

working for a single crew leader, than for a single grower.

One problem cited to us as common in other states, but which we did not actually find in Pennsylvania, is intentional skirting of obligations by employers who switch workers when they've been paid almost $150 or worked almost 20 days.

Workmen's Compensation and Occupational Injury and Disease Compensation Laws

The Commonwealth of Pennsylvania's Department of Labor and Industry administers the workmen's compensation and occupational injury and disease compensation laws that cover mushroom workers. Workmen's compensation provides medical services and income maintenance for workers injured or taken ill on the job. The claimant must appear at the local office and file for benefits. To qualify, the claimant must have been injured or acquired a disease while employed or engaged in activities related to employment. Eligibility is determined by agreement between involved employer and employee or by agency referee decision in an adversary proceeding. There is currently no outreach program to publicize this program to Spanish-speaking workers.[7]

In Delaware, State workmen's compensation laws are administered by the State department of labor. The services provided and the manner in which they are administered are similar to those in Pennsylvania. Delaware has a working agreement with two local agencies, the Delmarva Ecumenical Agency, a CETA 303 grantee, and the Migrant Home Committee. Both of these agencies have an active outreach program throughout the State of Delaware. In addition, the division of employment services has a full-time bilingual staff member who visits the labor camps and works directly with the State monitor/advocate. Brochures are available in English and in Spanish.[8]

Most workers are either unaware of the fact that they are covered by workmen's compensation laws for job-related injuries or do not fully understand their rights and benefits. In testimony at the open meeting and in interviews with workers, the Advisory Committees were told that if a worker becomes sick or is injured on the job, he may be terminated and lose his housing as well. It was alleged that the grower is only interested in having someone who can do the job. If the worker cannot perform, the grower will find another worker who can, resulting in the injured worker's eviction, as well as termination of employment.

TABLE I

Minimum Wages Under the Fair Labor Standards Act

	RATES		
EFFECTIVE DATE	Previously Covered	Covered under the 1967 act	Agricultural workers
May 1, 1974	$2.00 an hour	$1.90 an hour	$1.60 an hour
Jan. 1, 1975	2.10 an hour	2.00 an hour	1.80 an hour
Jan. 1, 1976	2.30 an hour	2.20 an hour	2.00 an hour
Jan. 1, 1977	2.30 an hour	2.30 an hour	2.20 an hour
Jan. 1, 1978	2.30 an hour	2.30 an hour	2.30 an hour

Minimum Wages Under the Fair Labor Standards Act

Notes to Section 4

1. Albert L. Meloni, President, Local 1034, RWDSU, commenting on the draft report, said: "The $3.00 minimum rate I quoted reflects an incentive bonus of 3-1/2 cents to 7 cents for each basket of mushrooms pulled. The minimum earned in this bonus plan is 28-1/2 cents per hour in addition to the regular hourly rate (spelled out in our agreement)." Letter to Jacob Schlitt, Director, Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, Oct. 29, 1976.

2. Legislation enacted in California in 1976 incorporating special procedures tailored to farm labor may serve as a model for other States, including Pennsylvania and Delaware.

3. NAACP, Western Region, et al. v. Peter J. Brennan, Secretary of Labor, et al., Civil Action No. 2010–72, Aug. 9, 1974.

4. Special Review Committee, "Second Report to the Court" (Nov. 10, 1975). The committee was established by the U.S. District Court for the District of Columbia to review compliance with the order of the court in NAACP, Western Region, et al. v. Brennan, et al., concerning the provision of services to migrant and seasonal farmworkers by the U.S. Department of Labor.

5. U.S. Employment Service (ES) Administrator William B. Lewis, commenting on the draft report, said:

> The discussion of the effectiveness of the ES in recruiting and placing mushroom workers on pp. 23 and 24 we believe to be irrelevant. The Wagner-Peyser Act established the ES system as a free, non fee-charging system of matching workers with jobs. With the exception of laws related to mandatory listings and certification of foreign workers, there are no statutory requirements that force an employer or a job seeker to utilize the ES. Indeed, there is no way in which the ES can force an employer to hire a job seeker referred by the ES. If the employers interviewed thought the ES irrelevant to the recruitment of workers, so be it. If the workers interviewed stated that they did not look to the ES as a good job referral source, so be it. These [are] subjective opinions and clearly should be labeled as such.

Letter to Jacob Schlitt, Director, Mid-Atlantic Regional Office, U.S. Commission on Civil Rights, Jan. 4, 1977.

6. NAACP, Western Region v. Brennan, 360 F. Supp. 1006 (D.D.C. 1973).

7. Paul J. Smith, Secretary, Pennsylvania Department of Labor and Industry, response to questionnaire from the Pennsylvania and Delaware Advisory Committees to the U.S. Commission on Civil Rights.

8. J. Thomas Schranck, Secretary, Delaware Department of Labor, response to questionnaire from the Pennsylvania and Delaware Advisory Committees to the U.S. Commission on Civil Rights.

5. Health and Safety

The cold and damp of the mushroom house, ideal for the growth of the mushroom fungus, is ideal as well for other fungi. Wet catwalks between the rows of mushroom beds, insecticides and fertilizers, air laden with mushroom spores, strong chemicals used for cleaning out the house—all of these subject the mushroom worker to the danger of disease and injury.

Local health officials testified that mushroom workers are prone to impetigo, arthritis, back ailments, and the whole range of respiratory diseases: tuberculosis, pneumonia, emphysema, bronchitis, asthma, and "mushroom lung." Other witnesses spoke of recent cases where workers suffered nosebleeds, hacking cough, and vomiting of blood, believed to result from allergic reaction either to chemicals or mold spores in the growing medium.

Joyce Carrasquillo, for 6 years a Chester County public health nurse, said that, although some people are extremely allergic to the caustic vapors of chemicals used to grow mushrooms, she has never seen a mask worn to filter them out. She believes respirators are necessary for the protection of workers in mushroom houses. There was also testimony that women working in the canneries, even though they wear gloves every day, have gotten fungi under their nails, raising the nails and eventually destroying them.

When gas is used to clean out the houses after the mushrooms have run their course, some workers do not understand that there should be a waiting period of at least 3 hours before they reenter the mushroom house. Even if signs are posted, they may not be able to read them. Ms. Carrasquillo proposed posting a skull and crossbones warning of danger and explanations in Spanish and English of the dangers involved.

There is no requirement for a routine physical examination of the workers—X-rays, tetanus shots, evaluation of respiratory functions—either prior to hiring or periodically while employed. Ms. Carrasquillo suggested that tuberculin skin testing should be performed routinely.

Ms. Carrasquillo also shared with the Advisory Committees testimony given before the Standards Advisory Committee on Agriculture, subcommittee on ladders, of the U.S. Department of Labor. A primary safety hazard to the mushroom worker is the unsafe use of ladders and catwalks in the mushroom growing houses.

Testifying before the Standards Advisory Committee, Charlene Snow, a law student at the University of Detroit School of Law, described the catwalks in a mushroom house she visited:

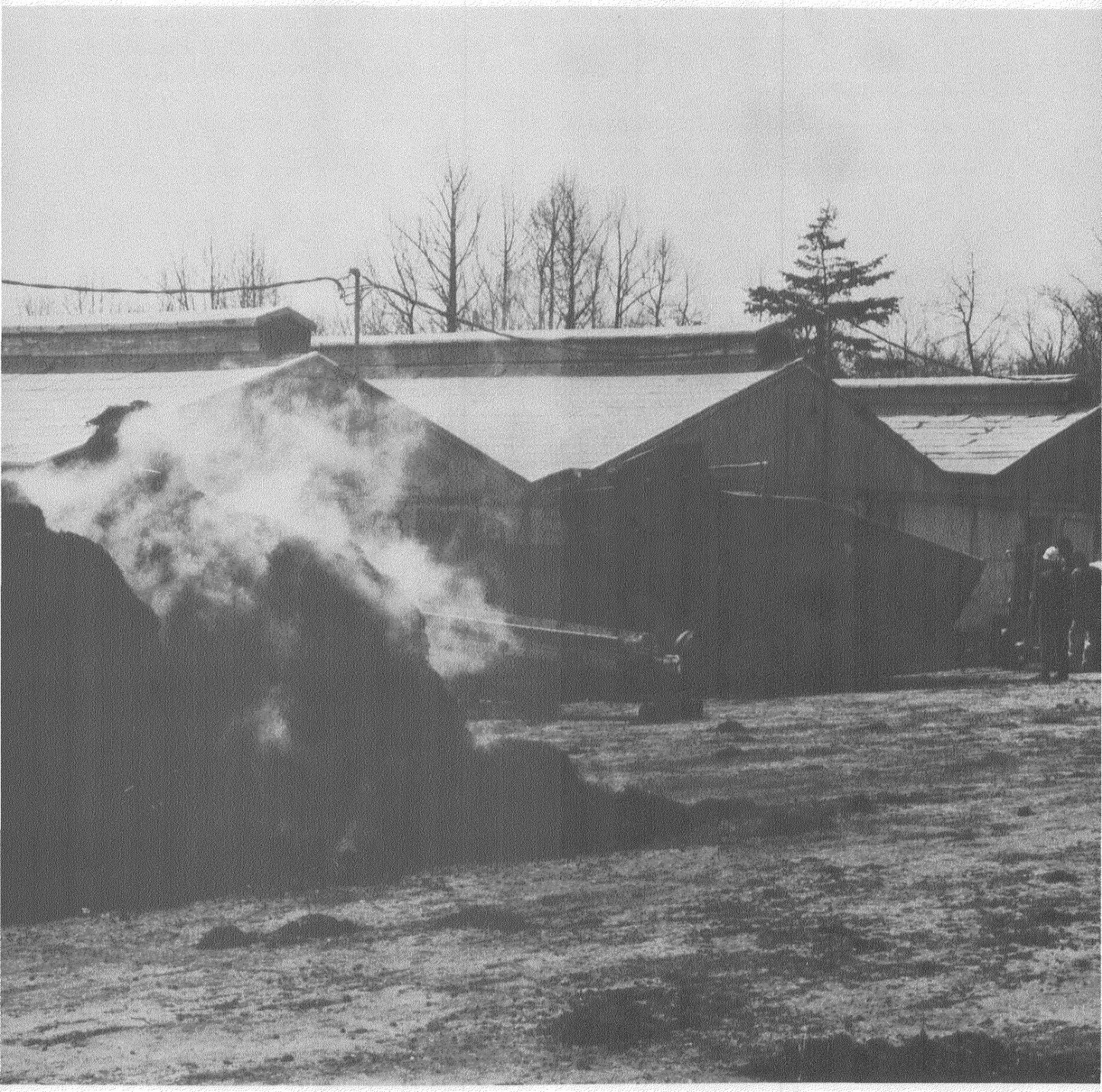
> ***Two wooden planks, each wide enough for one human foot, are extended next to each other on a rafter-like structure about 5 feet above the ground floor. Workers stand on these and stretch across the beds to pick mushrooms and to load and unload the beds with dirt.

Advisory Committee members saw the same conditions in the mushroom houses they visited in Chester County. The beds are piled to an approximate height of 10 to 12 feet. The workers are required to stand on the catwalks to reach the upper 5 to 6 feet of mushroom beds. Ms. Snow further described the conditions:

> The catwalks are approximately two feet away from the mushroom beds on each side. Since there is no guard-rail alongside the planks, it is possible for a worker to slip on them when they are muddy, and fall between them and the beds.

Since mushrooms are grown in total darkness, workers wear helmets with a light that allows them to see directly in front of them. Unless ladders and catwalks are made safe for secure footing, twists, falls, and sprains are prevalent. There is the constant danger of the ladder rungs as well as the narrow catwalks becoming slippery.

Ross Gardiner, editor of *The Record*, a daily newspaper in Coatesville, Pennsylvania, submitted a statement describing accidents in Chester County's mushroom industry. He stated:



> A Mexican laborer, an illegal immigrant, was injured on the job. As he was climbing some six feet above the floor of the mushroom house, he stepped on a rotted board extending from one of the beds. The man was left immobile with one leg after surgery***.The laborer sought legal counsel and, after almost two years, finally won a judgment which left him with approximately $2,000 for the rest of his life.

Mr. Gardiner further reported:

> Another Mexican laborer was similarly injured on the job and his leg developed a serious infection. Although he showed his leg to the owner, nothing was done to assist the worker. It was only after the man was discovered by a third party, a Puerto Rican vendor, that he was taken to a hospital. The doctor on the case indicated that the action by the vendor saved the man's leg, since one day more would have meant the leg would have to be amputated.

Doctors and public health experts agree that there are serious health dangers involved in the mushroom-picking operations. Dr. Eladio A. Montalvo, a physician formerly with the Family Health Center of Southern Chester County, described certain diseases directly related to mushroom picking as:

> 1. Chronic orthopedic conditions such as scoliosis and losclosis of the vertebrae column, chronic aching backs and shoulders—these are related to position of mushroom pickers while working.
>
> 2. Circulatory insufficiencies in lower extremities—related to long hours of standing while working (some of the workers work continuously for more than 12 hours).

Chester County has a county-administered health department; the State does not provide services. However, there have been requests on behalf of workers in the county for services provided by the Pennsylvania Migrant Health Program that are not provided by the Chester County Health Department. It was suggested at the open meeting that the State should ascertain from the Chester County Health Commissioner the need for additional services.

The Pennsylvania Migrant Health Program does not have the authority to bring sanctions against violators of health and safety standards. It refers violations through the State secretary of health to the Federal Occupational Safety and Health Administration (OSHA).

OSHA is responsible for enforcing the Occupational Safety and Health Act of 1970, recordkeeping requirements under the Occupational Safety and Health Act of 1970, and occupational safety and health standards, 1974. These laws regulate health and safety conditions in the food-processing workplace for mushroom workers as well as in the mushroom houses. They regulate the use of chemicals, pesticides, physical structure and conditions of the workplace, and the maximum number of people in an area to perform jobs safely. These regulations are continuously updated as new hazards are discovered.

Inspections related to employment are also the responsibility of OSHA in conjunction with the Employment and Training Administration. It also has the responsibility for enforcing related recordkeeping requirements by employers. OSHA can enforce the laws and regulations it administers by onsite inspections of equipment and facilities to protect the safety and health of employees. Compliance checks are made with no advance notice given to the employer. If there are violations of the regulations, offenders are given a citation along with proposed penalties. The citation categorizes the violation as serious or nonserious, and violators are given a deadline for compliance. However, OSHA claimed that owing to its heavy workload it has had to develop a priority system for inspections.

OSHA inspectors respond to complaints immediately if they appear to place employees in "imminent danger." Industrial workplaces are the second priority. The mushroom industry has apparently been given low priority. Neither Delaware nor Pennsylvania State OSHA personnel conduct inspections in the mushroom industry. The Pennsylvania Department of Agriculture told the Advisory Committees that it has no jurisdiction. Federal OSHA inspectors must be relied on to conduct all inspections.

Furthermore, it appears that clear guidelines for working conditions and exposure to chemicals in the mushroom houses have not yet been developed by OSHA.

Research in conjunction with the National Institute for Occupational Safety and Health

(NIOSH) is being conducted at Pennsylvania State University, the Beltsville Agriculture Center, and the University of Michigan on pesticides used in the mushroom industry and their effects on humans. These research centers, as well as OSHA, the U.S. Department of Agriculture, and the U.S. Food and Drug Administration, publish their results and recommendations for proper procedures and circulate them to mushroom growers.

6. The Mushroom Camp

Housing

In a study by the League of Women Voters of Southern Chester County, the housing of mushroom workers was described as follows:

> Farmer-owned housing which is located on or near the farms is an integral part of most mushroom-growing. Usually the job and the living quarters are tied together, and the pickers are required to vacate when their services are no longer useful to the farmer. Housing is of three types, usually: trailers, apartments and barracks. The quality ranges from good to substandard. The Chester County Health Department has a housing inspection program which authorizes visits after receipt of specific complaints. However, occupants as well as public health officers are reluctant to report infractions, because the owner may respond by evicting the picker, leaving him without either shelter or job. The owner cannot be required to make repairs in empty dwellings.[1]

League members report that, although State codes require adequate housing, the enforcement of such statutes is hampered because the tenants are considered seasonal workers by the United States Department of Agriculture (USDA). However, many mushroom workers reside year round in grower-provided housing, and a person may live in this housing only as an employee of the particular grower. Some mushroom camps have been classified as migrant camps. Other mushroom camps that have the same characteristics are not considered migrant camps. These different classifications lead to differences in inspection and services.

It has been alleged that a large number of labor camps run by growers or labor contractors often become virtually prisons for the employees and families who occupy them. In one case reported to the Advisory Committees, workers living in a common dormitory were not permitted to leave to mail letters or visit the town. If they left the premises, they would not be permitted to return. In a camp visited by Advisory Committee members, workers were not permitted to have personal friends on the premises.

Some growers do provide adequate housing for the workers they employ, but much of the housing was termed "deplorable" by several witnesses at the Advisory Committee open meeting. Cristobal Bonifaz of the Chester County affiliate of the American Civil Liberties Union (ACLU) stated that "housing conditions of the mushroom workers in Chester County were among the most deplorable we found anywhere" in an ACLU statewide study of farm labor housing.

Sheila Druley, director of La Comunidad Hispana, a community agency providing services to the Spanish-speaking population in Chester County, said:

> In some camps, quarters are extremely crowded, maybe three or four beds in a small room, windows boarded over or covered with plastic at this time of year. Flooring is defective, walls have holes. There's insufficient bedding—I've seen beds without mattresses, with no sheets. Inadequate plumbing, in one instance no indoor plumbing at all. Dirty kitchens where the food is prepared; inadequate heating.

Berardo Rosario, coordinator of bilingual services of the West Chester County Council on Addictive Diseases, testified that approximately 90 percent of the housing he visited was substandard. In addition, Judy Vidal of Esperanza described a typical mushroom worker and his family as "a three- or four-member family living in one room with a little kitchenette."

According to Ross Gardiner, editor of the *Record*, the following housing conditions for mushroom workers exist:

> In one case, housing provided by an outside job contractor consisted in part of one trailer with one toilet and a malfunctioning shower to house some 25 men paying $15 per week for board and additional sums for any foodstuffs.

> At one, some 35 men—all illegal aliens—were housed in one garage without sanitary facilities. Due to a dispute with a job contractor, the company had discontinued the agreement with the contractor and housed the men in the garage until another site opened up. No provision was made for the men to eat.
>
> In one case, a family of seven persons lived in a small camping trailer with a small plywood addition. The facility had no toilet. An outhouse was shared by that family and another family and rent for the outhouse was shared by both families.
>
> Local officials have found it difficult, if not impossible, to maintain regular surveillance of the camps for sanitation problems. It is common to see some trailers located near mushroom compost piles.

AMI's Timothy King, responding to the charges of inadequate housing, said:

> If there are growers who provide inadequate housing it would be those limited number of growers who could be at fault and there may be some bad apples, but that this does not justify encompassing wholesale castigation of the whole mushroom industry.

The Advisory Committees have been unable to find any records indicating the number of mushroom worker camps in the Pennsylvania-Delaware area or the number of workers in the camps. From interviews and testimony received at the open meeting, it is estimated that one camp has more than 100 workers; four camps have 80 to 100 workers, and 25 to 35 camps have between 35 and 50 workers. The remaining camps have 5 to 10 workers. Approximately 70 to 80 percent of the mushroom workers are believed to live in company-owned housing. A Delaware grower said there were no mushroom camps in his area, but other witnesses spoke of visiting such camps.

The Advisory Committees found no evidence that direct rental is charged for company housing. However, Mr. Rosario told the Advisory Committees that workers usually pay or have deducted from their wages $25 to $35 a week for room and board, which consists of a cot and two meals a day. The quality of the meals provided varies from camp to camp. It was alleged that some camps served meat only once a week.

Vincent Versagli, a mushroom grower from Coatesville, said housing was a much publicized sore spot for growers, and "we'd love very much to get out of the housing business." But, he said, growers must provide it, since there is no low-income housing in the Coatesville area. He further stated his firm had tried to place workers in low-cost housing, but had been told there was at least a 2-year wait.

Timothy King explained, "No grower, large or small, chooses to provide housing for his employees. In most areas of the two counties the grower must supply housing because community housing is not available to an employee."

Mr. King acknowledged that there had been no effort to obtain low-income housing in Chester County by AMI or the industry and that there was resistance from residents of the area.

Landlord-Tenant Relations

Because the landlord is also the employer, a worker who loses his job also loses his housing. He must leave the property, creating extreme hardship, especially for workers with families.

The growers, according to Sherwood Guernsey of the Chester County Legal Aid Society, contend that the mushroom worker is not considered a tenant under the State of Pennsylvania Landlord-Tenant Act and thus is not entitled to 30 days written notice prior to eviction as provided by that law.

The growers' contention is based on the premise that the workers do not pay rent per se. Mr. Guernsey told the Advisory Committees that the mushroom workers are indeed tenants and that they do pay in-kind rent through their labor at reduced wages. He also stated that his agency is currently involved in litigation to get recognition of the mushroom worker as a bona fide tenent for landlord-tenant purposes.

The Advisory Committees' members were told of cases in Chester County where mushroom workers were terminated from their jobs and did not immediately vacate the housing supplied by the grower. In these cases it was reported that the electricity and water were cut off and the workers were harassed. Such intimidation is usually successful, and the worker leaves rather than have legal action taken on his behalf.

Inspection

Among those testifying at the open meeting was Franklin Wanamaker, a monitor/advocate under the Department of Labor's Bureau of Employment Security—a post that is an outgrowth of Judge Richey's decision in *NAACP v. Brennan*, As indicated, the monitor/advocate position was created to assist migrant and seasonal farmworkers and to guarantee them equal protection under the law. Mr. Wanamaker stated that the Department of Labor's Employment and Training Administration has an agreement with OSHA for either agency's standards to apply, pending final agreement as to who will inspect the camps. But the status of actual, current inspection was not made clear by Mr. Wanamaker.

Lynn Rickart, a grower representative, said his company's housing had been inspected by OSHA as well as by the Chester County Department of Health and the Borough of Kennett Square Housing Authority, from whom they annually obtain a permit.

According to Mr. Guernsey, his office had filed a complaint with OSHA in Philadelphia in November 1975, but no action had been taken and he understands that no action will be forthcoming. He said OSHA, which has extensive regulations for industrial workers but very few for agricultural workers, will not willingly make an inspection and follow through with citations against growers.

The plight of the mushroom worker was highlighted by ACLU's Cristobal Bonifaz, who reported that a ruling had been received from OSHA dated January 22, 1976, refusing to inspect conditions in mushroom camps in Chester County. In it the area director of OSHA in Philadelphia stated: "We could not issue citations regarding living quarters or the growing operation***because conditions of employment could not be considered temporary." The ruling came in response to a formal complaint filed in November 1975 by ACLU on behalf of two mushroom workers at a Kennett Square camp.

Pennsylvania law requires that registered migrant camps be inspected by the Pennsylvania Department of Environmental Resources (DER). But to DER, mushroom workers are not considered migrants. And even that law, with its limitations, is not currently enforced. When DER's budget was reduced in April 1975, migrant camp inspections were deleted. Federal and State officials, local agency representatives, and growers all concurred that OSHA had taken over from DER and was now responsible for camp inspections. So it appears that, if OSHA abdicates responsibility, no agency has responsibility for inspection of mushroom camps.

Right of Access

In addition to the many other factors isolating mushroom workers from the community, the Advisory Committees were told by concerned citizens and officials of the denial of access to mushroom camps.

Catherine Gallagher, human resources advisor for the Pennsylvania Department of Community Affairs, told of being refused access to a mushroom labor camp while in the company of Secretary of Community Affairs William Wilcox and other State officials. The party was made to wait an hour and a half until cleared by the grower's attorney. At another camp, only a limited number was admitted.

Local agency representatives testified that they were denied admittance when they attempted to visit the mushroom camps. Ms. Druley told of a board member of Comunidad Hispana whose life was threatened if he continued to visit a certain camp.

The ACLU planned to file suit in Federal district court in Philadelphia over access to mushroom camps in Chester County. Its attorney, James Carter, stated ACLU's position:

> Any public group, with or without an invitation, can go onto the grounds of a labor camp where people live. The growers cannot keep them isolated from social groups, labor leaders, or newspaper reporters. If the area is strictly a place of work, we don't claim this right. But this has been established by a number of court cases.

Lynn Rickart, a grower representative, said that, if people such as social service workers or employees' friends would identify themselves properly and request access before entering the camps, there would be no problem visiting a residence after hours. He testified that they must ascertain that the visitor is not there to exploit workers, to sell drugs or illegal liquor, or for purposes of gam-

bling or prostitution. During working hours, outsiders could be endangered by heavy equipment, so their presence in the camps is not encouraged. Mr. Rickart said that reporters would not be denied access if properly credentialed.

Note to Section 6

1. League of Women Voters, Chester County, *Puerto Rican Mushroom Picker, Transplanted Citizens of Our Community* (Introductory Study, 1974–75), p. 2.

7. Crew Leaders

The single most serious and most frequently complained of problem that confronts mushroom workers is the crew leader. In the words of the Farmworkers Civil Liberties Project:

> Of all the abuses to which agricultural workers and migrant workers are subjected, there is nothing worse than those perpetrated against them by irresponsible, cruel and criminal crew leaders. The mere existence of such a system of labor control is an anachronism in the 20th century United States.[1]

Crew leaders do represent a system of labor control, and their role is both pivotal and self-perpetuating. Many forces—the workers' efforts to find work away from home; the convenience for employers to deal with entire crews through one person; the economic forces that keep wages low—combine to institutionalize the workers' dependence on crew leaders. The illegal and often violent means by which crew leaders manage the lives of their crews cannot be dismissed as an aberration, but are, in fact, systemic. It may be the only way to keep a labor force cheap and docile. There are decent crew leaders to be sure, but there are so many others who are not that Federal and State regulations directed at them are only part of the answer.

The crew leader's business is to recruit and often to transport farmworkers from their home areas to places of employment and once on the job, crew leaders may act as foremen or even as the employer. In the latter case, they receive the workers' wages directly from the grower, who takes no further responsibility for wage payment, social security, and withholding income tax.

Many crew leaders are former migrant workers. In testimony before the Advisory Committees, they were described as:

> the guy who's in charge of the barracks where the people live. He controls the liquor the person drinks, the food he eats, the transportation he's provided, the medicine he takes, and so forth.
>
> Now what happens if you have a bad guy in charge? What is happening is that the worker is completely ripped off.

In more general terms, the crew leader is that person who manages the affairs of the mushroom camp for the owner. While most mushroom workers are hired at the camps, crew leaders (often called labor contractors) may contract with the growers to hire workers.

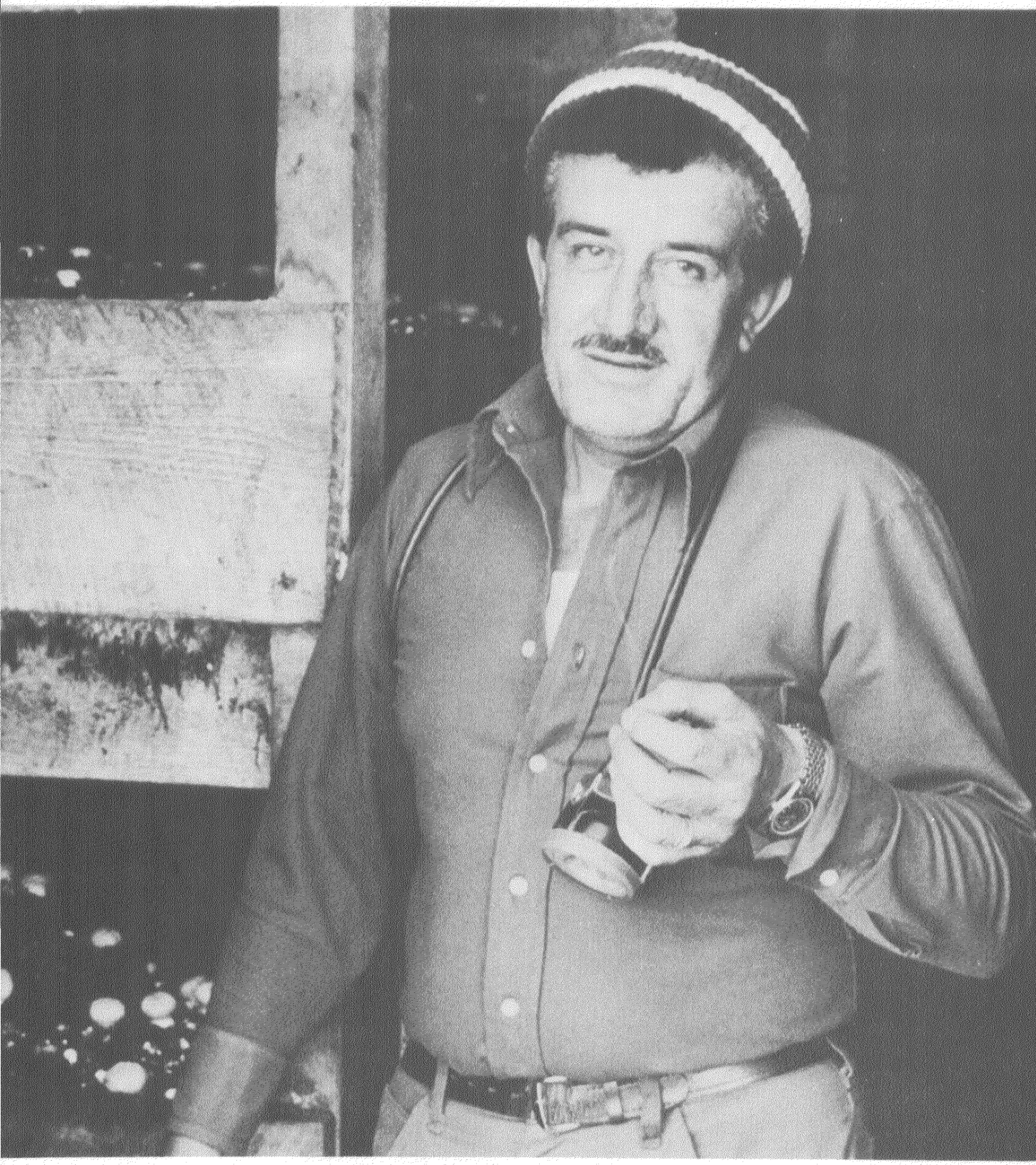
From the moment they are hired, workers are dependent upon the crew leader for all dealings with the grower. Crew leaders are usually bilingual, while the growers are not. The worker becomes isolated from his employer, and complaints go only as far as the crew leader. It has been alleged that crew leaders have a free hand in managing the camps and that workers are virtually at the mercy of the crew leaders.

The workers also rely upon the crew leaders for transportation to town, food, and entertainment. "Entertainment" is frequently liquor, for which workers pay exorbitant prices to the crew leaders.

Berardo Rosario concurred that "The worker is completely dependent upon the crew leader for almost anything he needs—room and board, food and transportation." According to Mr. Rosario, crew leaders also provide workers with alcohol, women, and drugs. The Chester County, Pennsylvania, ACLU called the crew leader system "20th century slavery." It charged that workers have reported paying crew leaders $25 to $35 for transportation to medical facilities.

The method of paying wages also contributes to the mushroom workers' problems. On pay day, many crew leaders, according to the *Coatesville Record*, distribute wages after deducting what they feel the workers owe them for the various services they rendered. Often a worker will receive no pay at all, only a "balance due" notice. When a worker has no money, he is extended credit and becomes further in debt to the crew leader.

The isolation of the camps from the local community, combined with the unique relationship



with the crew leader, makes for a life totally dependent upon the crew leader. This isolation works to the advantage of the crew leaders. Workers, if they wish to leave, have to rely upon the crew leader for transportation back home. Such a condition makes the workers victims of intimidation. Officer Paul Yoder of the Pennsylvania State Police told the Advisory Committees that he had received complaints that crew leaders kept people against their will and shot at them when they tried to leave camp.

Maria Matalon, field coordinator for the Pennsylvania Migrant Health Program, testified that crew leaders prevented workers from visiting migrant health clinics. Some workers complained to physicians and nurses about the physical abuse to which the crew leader subjected them.

An October 1975 article in the *Coatesville Record* reported that workers who lived on a mushroom farm located in Kelton alleged that their crew boss prohibited the workers' families to visit them, forced the men to work when they were sick, and physically threatened and attacked them.

Crew leaders often encourage workers to move from one grower to another, according to testimony at the open meeting. This movement works to their economic benefit; since, it has been alleged, they receive kickbacks from workers for finding them jobs. The greater the turnover rate in the work force, the more money the crew leader receives in kickbacks. One grower told the Advisory Committees that it is to his company's advantage not to have a crew leader. "There's less turnover," he said.

Crew leaders are now required to obtain licenses from the Federal Government, as well as from the Pennsylvania State Department of Labor and Industry and the Delaware Department of Labor's Bureau of Industrial Affairs. According to the Pennsylvania *Supplement to Regulations for Migratory Farm Labor Camps:*

> the term "Crew Leader" shall mean any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, transports, manages, or supervises migrant workers in connection with agricultural employment.

Section 2 of this supplement prohibits crew leaders from:

> Knowingly giving false or misleading information to migrant workers concerning the terms, conditions, or existence of agricultural employment; and from allowing workers to occupy substandard housing or housing where sanitation is not in accordance with Department of Health regulations.[2]

The problem in applying Federal crew leader laws to the mushroom industry is that the vast majority of crew leaders are not involved with the interstate transportation of workers and, therefore, according to State representatives of the Department of Labor, they are not subject to the provisions of the Farm Labor Contractor Registration Act (FLCRA), as amended. The FLCRA also exempts all employers who recruit for their own operations, and their full-time employees who do so on an "incidental" basis.

Notes to Section 7

1. Cristobal Bonifaz, *The State of Farm Laborers in Chester County, End of 1975 Report* (American Civil Liberties Foundation of Pennsylvania, Inc., Farmworkers Civil Liberties Project, Jan. 6, 1976).

2. Commonwealth of Pennsylvania, Department of Labor and Industry, "Special Requirements for Crew Leaders," *Supplement to Regulations for Migratory Farm Labor Camps* (1966), pp. 4–6.

8. The Illegal Alien

Raymond Penn, supervisor of criminal investigation in the Philadelphia District Office of the United States Immigration and Naturalization Service (INS), testified at the open meeting that illegal aliens[1] have been entering the mushroom industry in Chester County, Pennsylvania. He stated:

> We have reason to believe there is an underground railway from the border on up, usually going to Chicago first and then transporting [illegal aliens] into the Philadelphia area by various methods***. Now this isn't true in every illegal alien case [in the mushroom industry], but it is true in a lot of them***I feel through my encounters in the field that it is other migrant workers in the area who have gone out of the mushroom-picking job and have gone into transporting and actually smuggling illegal aliens [from Mexico].

According to *Coatesville Record* editor Ross Gardiner:

> It is well known in our county that certain individuals charge $500 per worker to import illegal aliens from Mexico. They are reportedly transported in a truck, the back of which is filled with something else, like melons. A small vent allows air into the truck. While owners deny making any such arrangements for importation of labor, the number of Mexican workers in the county continues to grow.

The local press has interviewed illegal aliens who revealed that it takes them about 8 days to make their way from Mexico to Chester County. They come to Chester County because they feel they can earn a living there and are less likely to be discovered and deported.

Judy Vidal lives in the Hockessin area where most of the Delaware mushroom industry is located. She reported that mushrooms workers have told her that over the past few years illegal aliens from Mexico have been replacing Puerto Ricans in the mushroom industry, thwarting efforts by workers for higher wages and better working and living conditions.

Raymond A. Morris, District Director of INS in Philadelphia, told the Advisory Committees that his office estimates there is an illegal alien population of approximately 70,000 persons within its jurisdiction; more than 52,000 are assumed to be gainfully employed. The illegal alien population in Delaware is approximately 6,000, including 4,800 who may be gainfully employed.

INS further estimated that there are about 8,000 illegal aliens employed in agriculture within the jursidiction of its Philadelphia regional office, 1,000 of whom are thought to be employed in the mushroom industry and to have come from Mexico. According to INS, of the 297 illegal aliens that they apprehended who were employed in agriculture between February 1, 1975, and January 31, 1976, almost 57 percent, or 169 persons, were Mexican nationals. INS estimates that 150 of the 169 Mexican nationals would have been employed in the mushroom industry.

The great majority of mushroom workers employed in the mushroom houses are male, single, and Spanish-speaking. Previously almost all were Puerto Ricans. Mushroom growers at the open meeting said they are unable to differentiate between Puerto Ricans and Mexicans and pointed out that immigration officers also have "a very serious problem identifying them."

Mushroom growers are aware that they have employed illegal aliens. Vincent Versagli of Keystone Mushrooms stated at the open meeting that some illegal aliens had been found on his property, but he could not recall exactly how many.[2]

Lynn Rickart of Grocery Store Products told the Advisory Committees:

> Last year we had 35 Mexicans taken off the property as illegal aliens. The previous year, I can't remember the number; it was something in the teens. These people were picked up by the immigration authorities in one mass raid on our housing.

The screening process used by Grocery Store Products is typical of steps taken by the larger

mushroom growers to determine the citizenship of applicants. Mr. Rickart explained:

> All of our employees fill out an application on which they indicate (or they're asked): Are you a U.S. citizen? Yes or No? If they check "No" we ask them to show a green card[3] that would indicate they they are legal aliens and are legally entitled to work in the United States. If they don't have the green card, we don't hire them. We make photostatic copies of the green card and keep them on file with their personnel records. Other than that identification, every employee that we have on our payroll is required to present a social security card before they begin working for us.

Most mushroom growers accept a social security card as proof of citizenship, without asking for further documentation. Mushroom growers who testified told the Advisory Committees that they understood possession of a social security card was proof of citizenship.

However, Mr. Penn explained that there is an inherent weakness in relying upon this screening procedure. Until recently almost anyone could obtain a social security card. Although more difficult now, it is still possible to obtain a social security card with false information or through other means. He emphasized that a social security card is no evidence of nationality.

According to Cristobal Bonifaz, farm labor contractors are the source of illegal workers. "They say to the employer, I have X number of workers: How many do you want and when do you want them? I'll bring them in." They then recruit and transport the workers.

Under the Farm Labor Contractor Registration Act, farm labor contractors are required to obtain a certificate of registration from the Secretary of Labor in order to provide migrant agricultural laborers for interstate agricultural employment. The act, as amended, requires that farm labor contractors:

> refrain from recruting, employing, or utilizing, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment;***

Violation of the act can result in the suspension, revocation, or denial of renewal of a certificate of registration as well as a fine of not more than $500.

If the estimate of 1,000 illegal aliens from Mexico working in the mushroom industry is close to accurate, these workers make up from one-third to one-half of the total number of workers in the mushroom houses.

According to Mr. Bonifaz:

> Mexican workers were first introduced to Chester County in 1974. These workers are particularly desirable to growers, since they live in constant fear of deportation. The abuses perpetrated against them and the lack of protection inherent in their status is one of the most severe problems in the farm labor community of Chester County.

Illegal aliens in the United States are subject to deportation when apprehended by INS. They commit a misdemeanor when they enter or remain in the United States without legal permission; they commit a felony when they claim American citizenship. Other crimes may also be committed, such as securing forged or false identification. This means that illegal aliens from Mexico, as well as other countries, are "outlaws" and have no place to turn for help when they are victimized or abused. The illegal alien is not likely to complain about wages, hours, housing, food, safety and health, or any other conditions while trying to earn a living.

Illegal aliens generally do not have bank accounts and are prime targets for robbery, since they are also unlikely to report the crime for fear of deportation. Many send home to their families in Mexico the money they are able to save. Mushroom growers acknowledge that Mexicans are good workers and eager to earn as much money as possible.

Corporal Edward Wandishin, of the Pennsylvania State Police in Avondale, testified that many crimes against illegal aliens in the mushroom industry go unprosecuted because they are either not reported or, if reported, the illegal aliens cannot be found to serve as witnesses. Their fear of being discovered as illegal aliens outweighs their fear of further victimization.

Officer Wandishin described a case in which two mushroom workers living in a house trailer in Chester County reported that their TV and stereo sets had been stolen. The police established that

they were illegal aliens, and they were jailed as material witnesses. They were imprisoned for 10 weeks before the American Civil Liberties Union learned of their plight and arranged for their release on bond. The release was obtained with the added stipulation that they would also be available to INS for deportation proceedings when their case had been heard. This case, which received considerable publicity, further sensitized illegal aliens to the fact that reporting crimes perpetrated against them may subject them to deportation.

When illegal aliens are apprehended, they have a right under the Fair Labor Standards Act to recover wages, since the act does not make a distinction between legal and illegal labor with regard to wages.[4] Illegal aliens may obtain a stay of deportation in order to litigate to recover wages or to have other rights protected.[5] Immigration officers are directed by their operation instruction manual to ask employers about back wages of illegal aliens, but many aliens do not themselves attempt to collect wages owed them or to fight deportation.

INS officers are required by law to have an "articulable reason" other than the fact that a person looks or acts like an illegal alien before questioning anyone regarding his or her citizenship. State or local police do not have authority to question persons regarding their citizenship, even if they have reasonable cause to believe a person is an illegal alien. They are supposed to report information to INS officers, who in turn are authorized to make the arrest. In the past, INS officers have made raids on places suspected of housing illegal aliens. INS officers say that most of their tips on illegal aliens in the mushroom industry come from other mushroom workers. INS Commissioner Leonard F. Chapman, Jr., ordered INS officers not to conduct any further raids to arrest illegal aliens.

Under the Immigration and Nationality Act, employers are not in violation of Federal law if they employ illegal aliens, but they would be commiting a felony under the act if they "knowingly harbor, aid or abet the entry of an illegal alien or knowingly transport an illegal alien whether or not it is connected with the employment of such an alien." Under section 1324 of the act, penalties of up to 5 years' imprisonment and a $2,000 fine can be enforced against any person bringing in and harboring illegal aliens. However, the statute expressly provides that "employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring." Cases under this statute have been very difficult to prosecute successfully. The current Federal laws, as applied, penalize the illegal aliens who knowingly enter the United States to work rather than the employers who may knowingly employ them.

State governments have expressed concern about the impact of illegal aliens on the economy. Section 2805(a) of the California Labor Code prohibits an employer from knowingly employing an alien who is not entitled to lawful residence in the Unites States if such employment would have an adverse effect on lawful resident workers.

In April 1976 a similar bill was introduced in the Delaware General Assembly. The Supreme Court of the United States held the California statute constitutional, saying that States may pass legislation in which aliens are the subject of the statute regulating the employment relationship, to protect workers within the State, as long as the legislation is consistent with pertinent Federal laws.[6]

Authority to regulate immigration is exclusively a Federal power under the Immigration and Nationality Act. However, the Supreme Court ruled in *DeCanas* that the fact that aliens are the subject of a State statute does not render it a regulation of immigration.

The Delaware bill[7] provides:

> 705. Illegal Aliens
>
> (a) No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States, if such employment would have an adverse effect on lawful resident workers.
>
> (b) Any person found guilty of a violation of subsection (a) shall be punished by a fine of not less than two hundred dollars ($200.00), nor more than five hundred dollars ($500.00) for each offense.
>
> (c) The foregoing provisions of this section shall not be a bar to any civil action against an employer based upon a violation of this section.

Since there is no Federal legislation at this time that makes it illegal for an employer to hire an illegal alien, INS has tried to explain to employers why they should use better screening methods to determine citizenship. According to Raymond Penn, INS investigators have explained screening techniques to more than 50 percent of the mushroom growers in the Kennett Square area.

A Cabinet-level Domestic Council Committee on Illegal Aliens was established in January 1975 to develop domestic policies that would coordinate interagency programs and promote appropriate responses to this growing problem.[8] The Inter-Agency Committee for the Study of Problems Relating to Illegal Mexican Migration to the United States was established to study international issues related to the entry of illegal aliens from Mexico.[9]

Congress has also been considering the problem for some time. Bills have been introduced (including the Rodino bill H.R. 8713) to make it unlawful for any employer knowingly to employ an alien who is not a permanent resident or otherwise authorized to seek employment by the Attorney General. Employers would be required to make a bona fide inquiry regarding the employee's alien status.

Other bills that would make it unlawful for an employer to hire illegal aliens would also provide for the Attorney General to adjust the status of any illegal alien, who, on a certain date, was in the United States in violation of the law, to the status of an alien lawfully admitted for permanent residence.

Most of the bills contain provisions for making it possible for nonimmigrants from the Western Hemisphere to apply for and obtain immigrant visas while remaining in the United States, and for strengthening the current law regarding the falsification and forgery of illegal documents. Still another provision would amend the Civil Rights Act of 1964 to specify that aliens lawfully in the United States are protected, just as are citizens, by Title VII of the Civil Rights Act.

A statement issued by the Staff Director of the U.S. Commission on Civil Rights in July 1975 in opposition to the Rodino bill, read in part:

> It is our view that the passage of the Rodino bill in its present form will have a direct discriminatory effect upon minority persons seeking employment, whether they are citizens or aliens authorized to work in the United States***.
>
> Even if employers were to request the same proof of status from all applicants, the difficulties in making determinations of citizenship or alien status will inevitably result in employers hiring less minority applicants in order to minimize the risk of hiring illegal aliens. Minority citizens, as well as minority legal aliens, will be the victims of discriminatory hiring***.

Whatever the outcome of proposed legislation, nationally and within Pennsylvania and Delaware, it is bound to have a profound impact on the mushroom industry and mushroom workers.

Notes to Section 8

1. Persons who enter the United States in violation of the Immigration and Naturalization Act of 1952, as amended, 8 U.S.C. §1101, et seq., are illegal aliens whether or not they enter with the intent of working. Only citizens, immigrants, and a few nonimmigrants may legally hold jobs in the United States. Persons who violate the terms of a visa after legally entering the country are also illegal aliens.

2. See Mr. Versagli's letter in appendix H.

3. Citizen-residents of Mexico or Canada who commute to work in the United States on a daily basis or for seasonal work are classified as *special migrants*. These are persons who are sometimes referred to as "green-card commuters" because they possess a Form I-151 issued by the Immigration and Naturalization Service, which used to be green in color, indicating they have permanent resident alien status.

4. 29 U.S.C. §215(a)(3).

5. Roberto, et al. v. Hartford Fire Ins. Co., 177 F. 2d 811 (7th Cir., 1949); Gordon and Rosenfield, *Immigration Law and Procedure* (1972), vol. 1, sec. 1.37.

6. DeCanas et al. v. Bica et al. (Feb. 25, 1976).

7. An Act to amend Chapter 7, Title 19, of the Delaware Code.

8. Doris M. Meissner, Executive Director, Cabinet Committee on Illegal Aliens, Department of Justice, interview, Apr. 13, 1976.

9. Ibid.


Al Piso

9. Services

Most programs providing services to mushroom workers in Pennsylvania and Delaware do so with supplemental Federal funds. In 1975 Pennsylvania had approximately $1.5 million available for programs to help meet the special needs of all farmworkers including mushroom workers: CETA, section 303—$514,000; migrant education—$818,000; migrant health—$155,000 (including $40,000 carryover); and migrant Head Start—$32,000.[1]

Health

Initially, migrant health programs could only serve migratory farmworkers. It was not until 1970 that the Public Health Service Act was amended to permit services to seasonal farmworkers. In 1975, the Public Health Service Act was rewritten and became known as the Special Health Revenue Sharing Act of 1975.

The legislative intent of the Special Health Revenue Sharing Act was to strengthen and broaden the migrant health program of the U.S. Department of Health, Education, and Welfare (HEW). This was done by:

1) requiring migrant health centers in "high impact areas" to offer appropriate supplemental and environmental health services;

2) including the definition of standard "primary health" (emphasizing screening for children, preventive dental, diagnostic, laboratory, emergency medical and transportation services); and,

3) in high impact areas requiring majority participation of those served by each center on its governing board.

The act also authorized an appropriation of $39 million in fiscal year 1976 and $44 million in fiscal year 1977, and directed that emphasis be given to high impact areas in the distribution of funds.

Unfortunately, neither Pennsylvania nor Delaware has high impact areas and therefore cannot not expect the new guidelines to increase their funding. High impact areas are defined as areas with 6,000 or more migrants and seasonal farmworkers for more than 2 months.

Under the 1975 act, HEW may make grants or enter into contracts with public and nonprofit organizations to plan, develop, and operate programs and deliver services outside of high impact areas. These programs and services include:

1. Emergency care for migratory and seasonal farmworkers and members of their families.

2. Primary care for farmworkers and members of their families. The definition of primary care to be spelled out in regulations, but in the act itself it includes the following:

3. (a) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians; (b)diagnostic laboratory and radiology services; (c) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction), prenatal services, well-child services, and family planning services; (d) emergency medical services; (e) transportation services as required for adequate patient care; and (f) preventive dental services. (Migrant Health Service Act, Section 319(a)(6).)

3. Development of arrangements with existing facilities to provide primary health services to farmworkers and their families.

4. Services that otherwise improve the health of farmworkers and their families.

In both high impact areas and other areas, HEW may:

1. Assist the states in the implementation and enforcement of acceptable environmental standards, including enforcement of standards for sanitation in migrant labor camps and applicable Federal and state pesticide control standards; and

2. Conduct projects and studies to assist the several states and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, pesticide hazards to which migratory agricultural workers, seasonal agricultural workers, and members of their families are exposed.[2]

The act also requires that priority be given to applications submitted by community-based organizations, provided they are representative of the population to be served.

Marie Matalon, field coordinator for the Pennsylvania Migrant Health Project, explained the program to the Advisory Committees:

> The Pennsylvania Migrant Health Project was one of the first, if not the first, to provide comprehensive health care to migrants***.To serve some 200 camps in 21 counties, we employ 16 public health nurses and paramedical personnel to screen migrant farmworkers and their dependents and to refer them to appropriate health services. We attempt to make up for the lack of medical personnel by strategically establishing migrant clinics in areas of high migrant population.

However, the State's migrant health program discussed by Ms. Matalon does not operate in Chester County. The State department of health provides no services where a county health department exists, and Chester County is one of four counties in the State that has its own health department. The State department of health would assist only if the county requested assistance, or if an outside agency recommended that the State intervene in county operations.

The Chester County Health Department is responsible for the Migrant Manpower Project, provided through the county division of nursing. This service is provided to all identified migrant and Spanish-speaking families of Chester County to ensure, insofar as possible, maintenance of health and curative services for identified illnesses. According to Dona J. Sensenig, the bilingual public health nurse of Chester County, services are provided to official migrant camps in Chester County, 10 of which are mushrooms camps. From July 1, 1975, until December 31, 1975, 441 individuals received services through the migrant project. Of these, 405 were Puerto Rican, 35 were white, and 1 was black. Of the 441 recipients, 170 were male.

The Chester County Health Department also investigates complaints concerning water supply, sewage disposal, solid waste, housing, insects, rodents, etc. When violations of the county's regulations are found in these areas, legal action is initiated against the owner. Any worker living in housing provided by his employer can file a complaint. It should be noted, however, that Kennett Square, Downington, Phoenixville, and Caln Township are not served by the Chester County Health Department. When complaints are received for which the county has no jurisdiction, referrals are made to the Pennsylvania Department of Environmental Resources or to OSHA.

Public Welfare

The Pennsylvania Department of Public Welfare offers services through a variety of Federal and State-assisted programs. Migrant and seasonal farmworkers who are residents of the State are eligible for the same assistance and services available to other State residents. Until 1972 public assistance was not provided to temporary residents or those visiting, attending school, or involved in seasonal employment (migrant workers), who planned to leave Pennsylvania upon completing their activity. In September 1972 Pennsylvania modified its policy, granting temporary assistance to nonresidents.

In Pennsylvania, nonresident migrant workers may be entitled to financial assistance from the department of public welfare if they meet certain conditions: They must plan to return to their home State, or they must be temporarily unemployed and unable to meet basic living needs. A migrant and his family receiving assistance may also be eligible for burial payment, food stamps, and medical and social services. If a nonresident migrant worker is not receiving assistance, he may still be eligible for food stamps and medical and social services. All of these services are offered through county boards of assistance.

The major problem mushroom workers experience in qualifying for these services is presenting proof of employment. In testimony before the Advisory Committees, Sheila Druley, director of La Comunidad Hispana, a division of the Community Action Board in Kennett Square, stated that workers frequently receive paychecks with no check stubs.

> If we are helping him receive services from the department of assistance, there is no documentation of his pay***We had a client Xerox his paycheck before we took him over to the department of assistance. This was proof of pay. Otherwise, there is no other proof.

Berardo Rosario testified that growers are discouraging workers from seeking public assistance. Silvia Shunk, executive director of the Chester County Board of Assistance, told the Advisory Committees that applicants are reluctant to give information to public assistance workers. She thought that it is because of their fear of public agencies.

Other Services

The Chester County manpower program was allocated $80,000 to assist migrant and seasonal farmworkers in adult basic education, employment counseling, public health, legal aid, driver training, and transportation.

La Comunidad Hispana, in Kennett Square, assists the Spanish-speaking in Chester County. It has a bilingual staff that serves as interpreters at hospitals and courts and with police and employers. It operates an emergency food and clothing center, provides transportation for workers and their families, and make referrals to other agencies.

The Migrant Ministry, a volunteer organization, provides some of the same services as La Comunidad Hispana. The Council on Addictive Diseases provides counseling to county residents and has a special staff member delivering services to the Spanish speaking. And the Legal Aid Society, with offices in West Chester, Coatesville, and Kennett Square, provides legal assistance.

Esperanza, a self-help group in the Wilmington area, assists Spanish-speaking residents of New Castle County. Judy Vidal, former administrator of Esperanza, described the condition of the families in the mushroom camps:

> Most of them were not aware of their right to receive food stamps and the eligibility requirements, and there were no social service agencies who were informing them, and they were not sophisticated enough to deal with the system and identify the procedures to follow***
>
> They have all kinds of health problems and no real services. I've run into several women who are pregnant who didn't receive any information, either in prenatal care or immediately prior to the delivery of the baby, from any social service agency [or] from the owners of the farms. There are problems with alcoholism, particularly among the men. The children are sometimes undernourished or don't eat proper foods***.

Information on the food stamp program in Delaware is not being published in Spanish. Consequently, Spanish-speaking mushroom workers in Delaware are uninformed about the program.

Notes to Section 9

1. American Friends Service Committee, Pennsylvania Farm Labor Project, *Pennsylvania Farm Labor Plan* (prepared for Interdepartmental Council on Seasonal Farmworkers and Pennsylvania Department of Community Affairs), p. 20.

2. Ibid., p. 112.

10. Education and Voting

Migrant education programs are provided in both Chester County, Pennsylvania, and New Castle County, Delaware. They are funded under Title I of the Elementary and Secondary Education Act of 1965.[1] The act provides funds for the expansion and improvement of elementary and secondary school programs for educationally deprived children in low-income areas.

Section 122 of the act provides funds for programs serving children of migratory families. This program is administered through the Pennsylvania and Delaware Departments of Education, although both departments forward funds to local school districts.

The program provides services in Chester County for both the "currently migratory child" (a child who has moved with a parent or guardian within the past 12 months across a school district boundary) and the "formerly migratory child" (a child who, with the concurrence of his parents, is deemed to be a migratory child because he has moved within the past 5 years). Thus, the program is applicable to many children of "settled-out" migrants employed in the mushroom industry.

The Pennsylvania Department of Education has funded two programs in Chester County: the Chester County Intermediate Unit and the West Chester Area School District. In 1974, 142 children were enrolled in the Chester County Intermediate Unit program and 145 in the West Chester Area School District. Of the 145, 120 were from West Chester and 25 from Phoenixville.

The children are grouped by age with some flexiblity and are instructed in English and Spanish. This is made possible by the integration of the Title I migrant program[2] and the Title VII bilingual education program,[3] which is an ongoing school program. However, there is no integration with the regular summer school program.

Testimony received at the open meeting identified some inadequacies in the migrant educational programs in both counties. Joseph Turse, supervisor of bilingual education for the West Chester Area School District, explained that programs are publicized through bilingual brochures and bilingual notices in the newspapers. However, he stated, "our notices really do not reach a great number."

Mr. Turse believes there must be strong support for bilingual education:

> Until there is definitely State legislation which financially, fiscally, backs bilingual education programs and supports a district in a supplemental way as was done in Illinois and Massachusetts and New Jersey and so on, it is going to be very difficult, and children will be deprived of full bilingual programs.

Danny Gonzales, assistant to the New Castle County Executive, stated that he thought New Castle County needed better bilingual programs if it was to meet the needs of its Spanish-speaking children. The community with the greatest need for bilingual education programs is the city of Wilmington.

Voting

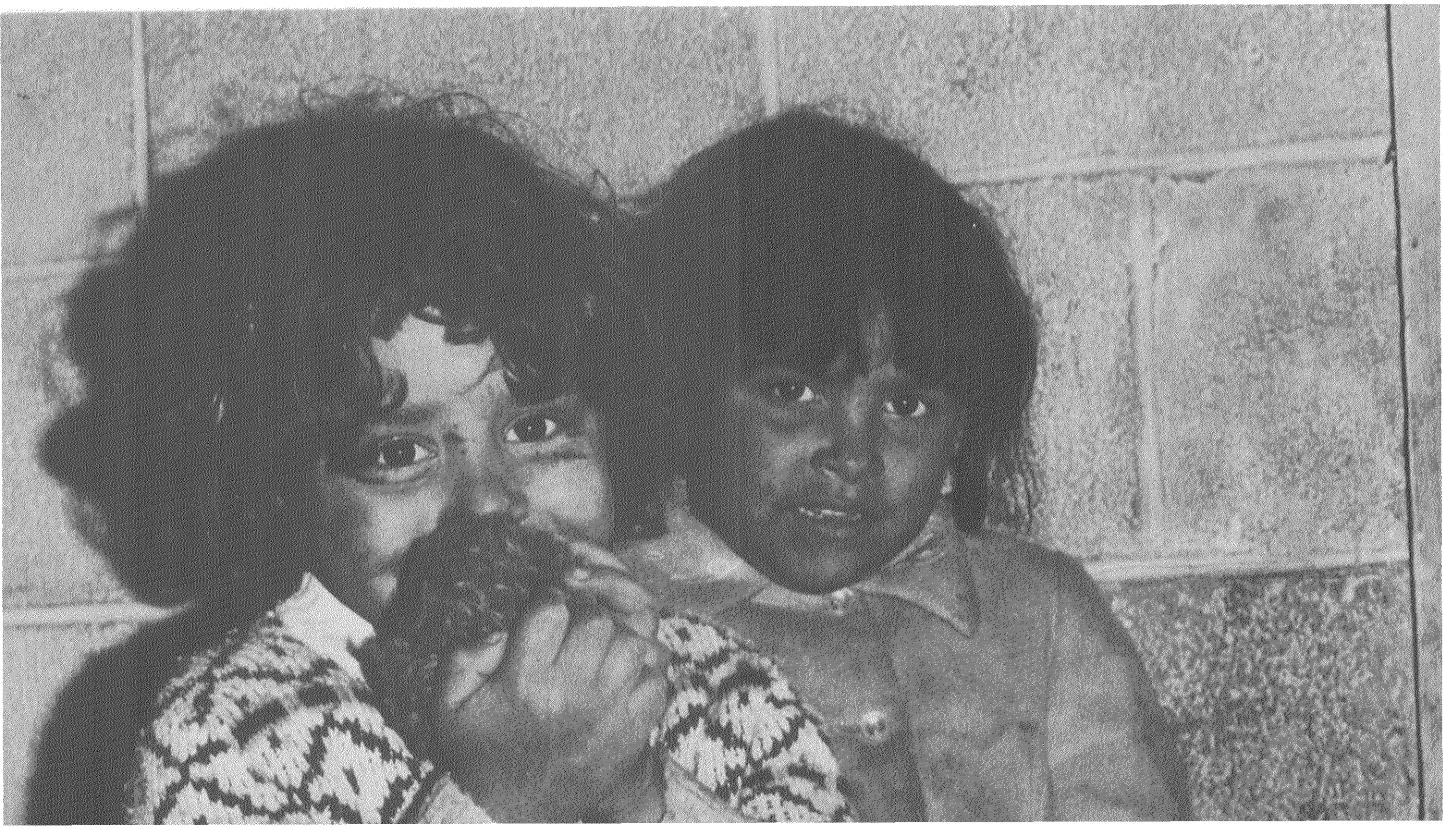
While the mushroom worker frequently is eligible to register and vote, testimony at the open meeting indicated that he rarely does so.

Judy Vidal, founder of Esperanza, stated:

> When I was involved with voter registration in Kennett Square and in Delaware, I noticed that the owners would sometimes prohibit the workers from leaving the farms, which I believe is illegal. Other times the volunteers who were assisting the Puerto Ricans in voting attempted to manipulate their votes and falsify their records.

Spanish-speaking workers who live in isolated camps are hard to reach by understaffed community groups who work with the Hispanic communities.

Only one grower knew whether his workers were registered to vote. Generally, growers were not concerned with voter registration. Mr. Rickart of Grocery Store Products stated that he had cooperated with the voter registration effort and



knew that several of his employees had been added to the registration rolls.

Because transportation is inaccessible, the numbers of mushroom workers who can register and vote are severely restricted. The Advisory Committees heard testimony that the Department of Elections in Delaware had been unwilling to provide representatives of the Hispanic community with the mobile unit necessary to register the mushroom workers.

Minerva Gonzales, president of the Wilmington League of Spanish Voters, also pointed out that there are no Spanish-speaking registrars in Wilmington and no Spanish-speaking employees at the Delaware Department of Elections.

The Chester County legal aid office has been pressing for Spanish poll workers and bilingual voter registration literature. It was frequently alleged that uncooperative registrars and inadequate assistance from poll workers are serious barriers for persons already hesitant about voting. Community and national groups have been campaigning for postcard registration, which has been adopted in a number of States.

Under the Voting Rights Act,[4] materials related to voting must also be printed in Spanish if 5 percent of the population of a district is Spanish-speaking. However, an up-to-date and reliable census to determine the Hispanic population is unavailable. Several observers doubted the accuracy of the current census. According to Mrs. Gonzales, there is a need for political education among mushroom workers, and this is provided in New Castle County by the League of Spanish Voters. Mrs. Gonzales stated that voting materials in New Castle County are not printed in Spanish and that there is no provision for voter registration after working hours.

Notes to Section 10

1. Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, Elementary and Secondary Education Act as amended.

2. Pub. L. 91–230, Title I, §§108, 109(a), 110, 111(b), 113(b), (3), (4), (7), 84 Stat. 124–126, 128, as amended, Apr. 13, 1970.

3. Pub. L. 89–10, Title VII, as amended Pub. L. 90–247, Title VII §702, Jan. 2, 1968, 81 Stat. 816.

4. As amended Aug. 6, 1975, Pub. L. 94–73, 42 U.S.C. 1971, et seq.

11. Findings, Conclusions, and Recommendations

Based on its study of the working and living conditions of mushroom workers, the Delaware and Pennsylvania Advisory Committees to the U.S. Commission on Civil Rights offer the following findings, conclusions, and recommendations:

Defining the Mushroom Workers

1. Finding. Various terms, such as migrant, staygrant, agricultural worker, farmworker, day-haul worker, seasonal farmworker, settled-out worker, food processor, migrant food processor, mushroom industry worker, and industrial worker in food processing have been applied to mushroom workers.

Conclusion. No single term is universally applied to mushroom workers. The terms used, however, cover all industrial and agricultural categories, including migrant and seasonal farmworkers.

Recommendation. Mushroom workers in mushroom canneries should be defined as industrial workers and mushroom workers in other aspects of mushroom growing should be defined as migrant or seasonal farmworkers by the relevant agencies.

2. Finding. Migrant or seasonal farmworkers do not receive the same protection as industrial workers under existing State and Federal laws.

Conclusion. The protection of migrant or seasonal farmworkers and industrial workers should be the same under the law.

Recommendation. State and Federal laws pertaining to migrant or seasonal farmworkers and industrial workers should be amended to provide equal protection for all categories of workers, especially in the areas of wages, overtime pay, employment discrimination, and unionization of workers.

3. Finding. There are no accurate data available related to the number of mushroom workers.

Conclusion. A study is needed to obtain accurate data on mushroom workers.

Recommendation. The Bureau of the Census, U.S. Department of Commerce, should undertake the necessary planning to obtain data on mushroom workers in its 1980 census and that the Bureau of Labor Statistics, U.S. Department of Labor, collect specific information on mushroom workers as an occupational category.

Working Conditions

1. Finding The National Labor Relations Act (NLRA) and the Pennsylvania Labor Relations Act (PLRA) exclude agricultural labor, among them mushroom workers, from coverage.

Conclusion. The rights of agricultural workers to organize and bargain collectively are not protected by Federal or State law.

Recommendation. All agricultural workers, including mushroom workers, should have the right to organize and bargain collectively. This right should be protected by Federal and State law. The NLRA and PLRA should be amended to include agricultural workers, with appropriate procedures and safeguards for their right to organize and bargain collectively.

2. Finding. The Federal minimum wage for agricultural workers is lower than that for industrial workers, and the provisions of the Pennsylvania and Delaware minimum wage laws exclude agricultural workers outright. The agencies responsible for administering these laws define mushroom workers as agricultural workers.

Conclusion. It is an invidious distinction to set minimum wages for agricultural workers lower than that for industrial workers.

Recommendation. Federal and State minimum wage laws should be amended so that no distinction is made between industrial and agricultural workers, and all workers receive the same minimum wage.

3. Finding. Mushroom workers, like other agricultural workers, are not covered by unemployment compensation.

Conclusion. Mushroom workers suffer from a disparity in treatment as compared to industrial workers, by being denied unemployment compensation benefits.

Recommendation. Congress should extend full unemployment compensation benefits to agricultural workers.

4. Finding. Many mushroom workers do not receive the benefits they are entitled to under the Social Security Act, special unemployment assistance, and workmen's compensation laws.

Conclusion. Mushroom workers are generally unaware of their eligibility for benefits under the various Federal and State programs and are often unable to prove their eligibility for benefits.

Recommendation. Education programs to inform mushroom workers of their rights to benefits should be increased and expanded. The number of bilingual staff members of agencies dealing with workers should be increased, and the recordkeeping requirements of the Social Security Act, the Farm Labor Contractor Registration Act, and the Fair Labor Standards Act should be enforced by the appropriate agencies.

5. Finding. Mushroom workers are not considered migrant or seasonal farmworkers by the United States Employment Service.

Conclusion. Since they are not so considered, they do not receive the services they would be entitled to through the provisions of Judge Richey's court order and followup measures adopted.

Recommendation. The U.S. Employment Service agencies should provide the same services to mushroom workers that they provide migrant and seasonal farmworkers.

Health and Safety

1. Finding. Few workers receive preliminary or periodic physical examinations to determine their general health status or possible reaction to mold spores and chemicals used in the mushroom houses.

Conclusion. Workers who do not receive physical examinations may have or may acquire respiratory problems that would be aggravated by conditions in the mushroom houses.

Recommendation. Growers should provide every worker with a preemployment physical and periodic examination while employed.

2. Finding. There is a high incidence of respiratory disease and skin infections among mushroom workers.

Conclusion. There is medical evidence linking respiratory diseases and skin infections to the work environment.

Recommendation. Respirators should be provided by growers and worn by all workers in mushroom houses; instructions for use and explanation of their importance should be given in English and Spanish to all workers; and preventive and ongoing treatment should be given for skin infections.

The Advisory Committees further recommend that OSHA study the incidence of respiratory diseases and skin infections among mushroom workers and develop strict regulations to protect the workers and minimize the harmfulness of their work environment.

3. Finding. Some workers are not aware that there should be a waiting period of at least 3 hours before reentering mushroom houses after they have been cleaned.

Conclusion. Workers entering the houses before the waiting time is over are exposed to the danger of inhaling airborne mushroom spores.

Recommendation. The Advisory Committees recommend that the universal symbol warning of danger—a skull and crossbones sign—be posted conspicuously at the appropriate time with full explanation in Spanish and English.

4. Finding. Where there are unsafe ladders and catwalks, accidents have occurred.

Conclusion. Safety standards for ladders and catwalks have not been enforced for the mushroom industry.

Recommendation. Standards relating to safe ladders and catwalks should be enforced by OSHA to prevent further accidents.

5. Finding. Clear guidelines for safeguards relating to the mushroom houses have not been developed by OSHA.

Conclusion. OSHA should give greater priority to the working conditions of mushroom workers.

Recommendation. OSHA should enforce existing regulations and develop more effective guidelines covering safe working environments for mushroom workers; and in addition, the Pennsylvania State Department of Labor and Industry and the Delaware State Department of Labor should be empowered to conduct inspections of mushroom operations for health and safety conditions.

The Mushroom Camp

1. Finding. Because of insufficient low-income housing in the Chester County area, many

mushroom workers must live in grower-operated housing.

Conclusion. Workers are frequently dependent on the grower to provide housing.

Recommendation. Chester County should initiate construction of low- and moderate-income housing to meet the housing needs of those working in the county.

2. Finding. Mushroom workers living in grower-operated housing are excluded from the provisions of the Pennsylvania Landlord-Tenant Act.

Conclusion. Such residents do not receive the same protections as other tenants.

Recommendation. The Pennsylvania legislature should amend the Pennsylvania Landlord-Tenant Act to include workers living in mushroom camps as bona fide tenants covered by the act.

3. Finding. Newspaper reporters, public and private agency employees, and friends of workers have been denied free access to the mushroom camps.

Conclusion. The denial of free access to the mushroom camp increases the mushroom worker's isolation from the community, denies the worker his civil rights, and negates his status as a tenant.

Recommendation. Free access to mushroom camps should be guaranteed by legislation including mushroom workers in grower-operated housing under the landlord-tenant act, and enforced by local law enforcement officials through the courts.

4. Finding. The Chester County Department of Health, the Pennsylvania Department of Environmental Resources, and the U.S. Department of Labor's Occupational Safety and Health Administration have all permitted unsanitary, unsafe, and overcrowded housing conditions to exist in mushroom camps by disclaiming responsibility for inspection.

Conclusion. The absence of responsibility for inspecting housing conditions in the mushroom camps has permitted deplorable housing conditions to exist in some camps.

Recommendation. The aforementioned Federal, State, and local agencies should coordinate their activities and agree upon agency responsibility for routine inspection of mushroom camps.

Crew Leaders

1. Finding. Many mushroom workers are dependent on crew leaders for food, transportation, living quarters, and entertainment.

Conclusion. Crew leaders exercise almost total control over the lives of mushroom workers.

Recommendation. The functions of crew leaders should be replaced by having growers provide adequate access to food and cooking facilities, establish credit unions, hire barracks maintenance personnel, and provide access to adequate transportation.

2. Finding. Crew leaders often act as foremen on the job.

Conclusion. Workers' lives are controlled by crew leaders on the job as well as off.

Recommendation. Crew leaders should be replaced by foremen on the job who are responsible for work activities only.

3. Finding. Spanish-speaking workers are often unable to communicate their concerns to growers, agency officials, and community workers.

Conclusion. Workers are often dependent upon the crew leader for communication, even though they may not trust him and cannot talk freely through him.

Recommendation. Bilingual State ombudsmen should be appointed to visit the camps to ensure that mushroom workers are able to express their concerns, and bilingual community organization representatives should have free access to the camps.

4. Finding. The majority of crew leaders in the mushroom industry are not involved in the interstate transportation of workers and are, therefore, not subject to the provisions of the Federal Farm Labor Contractor Registration Act.

Conclusion. Crew leaders not engaged in interstate transportation of workers are not subject to adequate government control.

Recommendation. The Pennsylvania and Delaware legislatures should adopt legislation comparable to the Federal Farm Labor Contractor Registration Act, requiring registration of all crew leaders, including those not engaged in the interstate transport of workers.

The Illegal Alien

1. Finding. Illegal aliens from Mexico make up from one-third to one-half of the total work force in the mushroom industry in eastern Pennsylvania, according to INS estimates.

Conclusion. The mushroom industry appears to be developing a growing dependence upon illegal alien labor from Mexico.

Recommendation. The mushroom industry through the American Mushroom Institute, together with community groups and INS officials, should develop policies and effective screening criteria to eliminate the recruitment and employment of illegal aliens.

2. Finding. The rights of illegal aliens relating to security of property are not adequately protected. This is due in part to their unawareness of their rights, their failure to seek legal redress, and the apparent unconcern of Federal, State, and local agencies.

Conclusion. Illegal aliens can be victimized and taken advantage of with impunity.

Recommendation. State and local agencies, including law enforcement agencies in Pennsylvania and Delaware, should establish procedures to protect the illegal aliens' rights against criminal victimization.

3. Finding. Legislation has been proposed at the national and State levels to deal with the issue of illegal aliens.

Conclusion. Illegal aliens present complex legal and political problems with regard to their presence in the work force.

Recommendation. Congress should carefully study the problems presented by illegal aliens in the work force and pass legislation to preserve the rights of both citizens and noncitizens.

Services

1. Finding. The Migrant Manpower Project of the Chester County Division of Nursing serves only officially designated migrant camps.

Conclusion. The majority of mushroom workers live in camps that are not official migrant camps and are not receiving services from the Migrant Manpower Project.

Recommendation. The Migrant Manpower Project should extend its services to all workers in mushroom camps.

2. Finding. The Chester County Division of Nursing has only one bilingual public health nurse.

Conclusion. The public health needs of Chester County's Spanish-speaking residents cannot be met by one nurse.

Recommendation. The Chester County Division of Nursing should increase the number of Spanish-speaking public health nurses.

3. Finding. Verification of employment is necessary for determining eligibility for public assistance. Many mushroom workers do not receive pay stubs or records of employment and are not aware of their right to obtain them.

Conclusion. Mushroom workers often discover they are ineligible for public assistance because they cannot prove previous employment.

Recommendation. The public assistance board and growers should develop a procedure to verify employment and earnings of workers, and the State and Federal labor departments should require employers to supply workers with written explanations of their earnings and deductions each pay period.

Education and Voting

1. Finding. The migrant and bilingual educational programs in Pennsylvania and Delaware are not adequately meeting the needs of Spanish-speaking children.

Conclusion. Children of mushroom workers with limited English-speaking ability have a legal right to a bilingual education program.

Recommendation. The States of Pennsylvania and Delaware should strengthen their migrant and bilingual education programs, provide the necessary fiscal support, and utilize Federal resources.

2. Finding. There is no accurate census of the Spanish-speaking population in Chester County, Pennsylvania, or New Castle County, Delaware.

Conclusion. An accurate census is necessary as a preliminary measure to determine whether the two counties are in compliance with the Voting Rights Act, as well as to determine the proper amount of Federal funds to which the counties are entitled.

Recommendation. The U.S. Bureau of the Census should conduct a special census of the Spanish-speaking population in Chester and New Castle Counties.

3. Finding. Workers in the mushroom industry are thwarted in their attempts to register to vote because of: (a) isolation from the community and lack of transportation; (b) failure of officials to make worker registration available at convenient hours; (c) failure of officials to provide bilingual staff to assist with voter registration; and (d) lack of knowledge of the registration and voting process.

Conclusion. The methods used by those who administer registration and voting are effectively denying voting rights to the Spanish-speaking workers in the mushroom industry.

Recommendation. In the absence of postcard registration: (a) local registrars should bring mobile voter registration units to mushroom camps; (b) local registrars should be given authority and resources to extend the hours for registration; (c) registrars' offices and mobile units should be staffed with bilingual personnel; and (d) voter education programs should be provided in Spanish and English.

Appendix A

SEASONAL FARMWORKER AND MIGRANT DEFINITIONS

U.S. DEPARTMENT OF LABOR
Manpower Administration
Washington, D.C. 20213

CLASSIFICATION	ES/Rural Manpower
CORRESPONDENCE SYMBOL	MEEP
DATE	July 17, 1975

DIRECTIVE: EMPLOYMENT SERVICE PROGRAM LETTER NO. 18-75

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : FLOYD E. EDWARDS
Associate Manpower Administrator
for Field Direction & Management

SUBJECT : Seasonal Farmworker and Migrant Definitions

1. Purpose. To provide revised definitions for identification of seasonal farmworkers and migrants and instructions for recording of such identification on the application card.

2. References. None

3. Background. The "Judge Richey" Court Order 2010-72 of August 13, 1974, calls upon the Department of Labor to require that State and local agencies: "Provide migrant and seasonal farmworkers the full range of Manpower Services under terms and conditions qualitatively equivalent and quantitatively proportionate to those provided non-farmworkers." Activity, as reported through ESARS, will be one indicator used to measure the degree of compliance with this provision of the Order. The definitions for seasonal farmworker and migrant farmworker listed here are compatible with the new CETA definitions.

4. Definitions. The following definitions have been developed for identifying and reporting services provided to the migrant and seasonal farmworker applicant group. [Note that there are two types of seasonal farmworkers - migrant farmworkers and nonmigrants]

a. Seasonal Farmworker. A person who has had at least 25 days' experience during the preceding twelve months working for wages in farmwork for a scheduled period of 150 consecutive days or less in any one establishment engaged in agricultural production or agricultural services (as classified in the 1972 Standard Industrial Classification (SIC) definitions included in industries 01 through 07, except 027, 074, 0752, 0761, and 078). Nonmigrant individuals who are full-time students are excluded.

[Note that the 25 day minimum qualification may be accrued in one or more establishments while the 150 day maximum applies only to work in one establishment. An individual who works 140 days in one establishment and 50 days in another establishment is a seasonal farmworker. On the other hand, an individual who works 160 days in one establishment is not a seasonal farmworker]

RESCISSIONS	EXPIRATION DATE
None	June 30, 1976

DISTRIBUTION MA-A,B,C-20 each, D,F,L,M,O,J

MA 4-148
Sep. 1974

For the purposes of the seasonal farmworker definition an establishment is an economic unit, generally at a single physical location, where business is conducted or where (or from which) services are performed. (For example, a farm, orchard, ranch, or an organization providing agricultural commodities or services from a single location). For purposes of the seasonal farmworker definition, farm labor contractors and crew leaders are not considered establishments. The organizations to which they supply workers are to be considered employing establishments for the purpose of this definition.

b. Migrant Farmworker. A seasonal farmworker whose farmwork experience during the preceding twelve months required travel such that the worker was unable to return to his/her residence (domicile) in the same day.

c. Migrant Food Processing Worker. A person who has had experience during the preceding twelve months doing food processing (as classified in the 1972 SIC definitions 201, 2033, 2035, and 2037 for food processing establishments) for a scheduled period of 150 days or less provided that it required travel such that the worker was unable to return to his/her residence (domicile) in the same day.

Copies of the SIC definitions included in the definitions above are attached.

5. Coding. The following codes (item 34, Application Card) will be entered for each of these applicant groups:

a. Code 1 - Seasonal Farmworker, not a Migrant Farmworker
b. Code 2 - Migrant Farmworker
c. Code 3 - Migrant Food Processing Worker
d. Code 0 - Negative

In coding, "b" & "c" above take precedence over "a". A worker who meets the definition of a migrant farmworker or a migrant food processing worker should not be classified as a nonmigrant worker. Some applicants will have a history of migratory work involving employment in industries 01 through 07 (except 027, 074, 0752, 0761, & 078) and also in industries 201, 2033, 2035, or 2037; in these cases use Code 2.

6. Action Required. These revised definitions will be effective as of July 1, 1975, and the above coding identification should begin at that time. Existing procedures for identification and coding remain in effect until July 1, 1975. The definitions presented above are somewhat different from those definitions included in the FY '76 Program and Budget Planning (PBP) Guidelines. However, as FY '76 planning was limited to migrant applicants, no planning revisions are called for at this time as the definition changes affecting migrants are not significant.

Appendix B

TESTIMONY BEFORE THE STANDARDS ADVISORY COMMITTEE ON AGRICULTURE

THURSDAY, DECEMBER 5, 1974

Subcommittee on Ladders

Phyllis A. Reha, Supervising Attorney

Michigan Migrant Legal Assistance Project, Inc.

The testimony which I am submitting today is supported by Michigan Migrant Legal Assistance Project, Inc. and Legal Aid of Chester County, Inc. of West Chester, Pennsylvania. Michigan Migrant Legal Assistance Project, Inc. is a private non-profit corporation located in Michigan and funded by the Office of Legal Services. It has two area offices one in Saginaw, Michigan and the other in Berrien Springs, Michigan. MMLAP's primary function is to provide legal assistance to seasonal and migratory farmworkers within the State of Michigan. The center of mushroom harvesting in Micigan is in Lapeer County. Most of the mushroom harvesting laborers are of Spanish descent, most of whom are from Puerto Rico.

Legal Aid of Chester County, Inc. is a federally funded HEW legal services program established to provide civil legal services to poor persons in Chester County. Chester County Pennsylvania accounts for approximately 50 percent of the nation's crop and thus a large amount of legal work is provided to mushroom harvesting laborers, predominately of Spanish descent, most of whom are from Puerto Rico.

Introduction

The Occupational Safety and Health Act was intended to provide safe and healthful employment for all of America's workers. Migrant and seasonal farmworkers are the most exploited workers in our society. Because of their extreme poverty and lack of training, they have no bargaining power and must accept work under whatever conditions are offered to them. Often these conditions do not include safe and healthful employment. The extreme health and safety hazards which their work subjects them to is borne out by their high rates of injury, death and disease.

Legal Authority

The Secretary of Labor has the authority "to set mandatory occupational safety and health standards applicable to business affecting interstate commerce." 29 U.S.C. 651(3), 655(b)(4). An occupational safety and health standard is a standard which is "reasonably necessary or appropriate to provide safe or healthful employment in places of employment." 29 U.S.C. 652(a)(8). The Secretary may promulgate such a standard where it is necessary to "serve the objectives of this chapter." 29 U.S.C. 655 (b)(1). The objectives of the Act are to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions." 29 U.S.C. 651. An advisory committee may be appointed by the Secretary to "assist him in his standard setting functions" 29 U.S.C. 656(b) and shall make recommendations to him.

It is our contention that a standard relating to the potential safety hazards involved in the mushroom picking process should be estabished. A primary hazard is the unsafe use of ladders and catwalks in the mushroom growing houses. The Ladder Subcommittee's proposed standard for ladders makes no specific requirment for the use of siderails, nor is there any provision for the use of guard rails of catwalks. There is no provision requiring the rungs of ladders to be free from mud, slime or other slippery substance. Since the research in the area of mushroom growing has been minimal, it is urged that the paucity of information and general knowledge in this area be acknowledged and that the Subcommittee on Ladders be urged to recommend the commencement

of thorough investigations into the area of safety hazards in the mushroom growing industry.

The Need for a Standard

To understand the necessity for standards specifically relating to ladders and catwalks in the mushroom growing industry, one must understand the mushroom picking operation.

Charlene Snow, a law student at the University of Detroit School of Law spent the summer of 1974 investigating problems of mushroom pickers in Lapeer County Michigan. She described the process of mushroom picking in an affidavit prepared after visiting the Dryden Mushroom Farms, Marzetti Bros., Inc.

> "***Two wooden planks, each wide enough for one human foot, are extended next to each other on a rafter-like structure about 5 feet above the ground floor. Workers stand on these and stretch accross the beds to pick mushrooms and to load and unload the beds with dirt."

The beds of manure are piled to an approximate height of 10–12 feet. The workers are required to stand on the catwalks to reach the upper 5 to 6 feet of mushroom beds. As Charlene Snow further describes:

> "The catwalks are approximately two feet away from the mushroom beds on each side. Since there is no guardrail alongside the planks, it is possible for a worker to slip on them when they are muddy, and fall between them and the beds."

Since mushrooms are grown in total darkness, the workers wear a lighted helmet with a light which allows the worker to see directly in front of them. Unless ladders and catwalks are made safe for secure footing, twists, falls, sprains and other back injuries would seem to be, and in fact are prevalent.

Wooden ladders without railings are propped up against the catwalks to enable workers to descend to the ground. There is a great danger of accumulation of mud and water on the rungs of the ladders as well as on the narrow catwalks to enable a workers to descend over five feet to the ground.

Accidents are Prevalent

Carlos Gregory a mushroom worker in Pennsylvania described an accident which occurred on June 2, 1972***. Carlos Gregory fell and hit his back. He is presently being treated by Dr. Smoker of Pennsylvania for injuries sustained in his left leg from that fall two years ago.

Ross Gardiner, newspaper editor of *THE RECORD*, a daily newspaper in Coatesville, Pennsylvania, submitted a statement relating to abuses in Chester County's mushroom industry. The following synopois is from an article that appeared in *THE RECORD*.

> "A Mexican laborer, an illegal immigrant was injured on the job. As he was climbing some six feet above the floor of the mushroom house, he stepped on a rotted board extending from one of the beds. The man was left immobile with one leg after surgery***The laborer sought legal counsel and, after almost two years, finally won a judgment which left him with approximately $2000 for the rest of his life."

Another item which Mr. Gardiner reported is as follows:

> "Another Mexican laborer was similarly injured on the job and his leg developed a serious infection. Although he showed his leg to the owner, nothing was done to assist the workers.
>
> It was only after the man was discovered by a third party, a Puerto Rican vendor, that he was taken to a hospital. The doctor on the case indicated that the action by the vendor saved the man's leg, since one day more would have meant the leg would have to be amputated. The owner first refused to pay any hospital costs but was threatened with exposure if he did not cooperate."

Doctors and Public Health experts agree that there are serious health dangers involved in the mushroom picking operations. Dr. Eladio A. Montalvo, M.D., a physican with the Family Health Center of Southern Chester County in Pennsylvania, describes certain diseases directly related to mushroom picking. He described the following:

> "1. Chronic Orthopedic conditions such as Scoliosis and Losclosis of the Vertebrae Column, Chronic aching backs and shoulders—these are related to position of mushroom pickers while working.
>
> 2. Circulatory insufficiencies in lower extremities—related to long hours of standing while working (Some of workers work 12–24 hours straight)".

Joyce Carrasquillo, a Public Health Nurse who had been working with mushroom workers for the past six years, notes in a declaration of November 26, 1974, that mushroom workers she has had contacts with have been treated for varying back injuries. She comments that workers seem to develop many more severe back ailments due to the mushroom picking procedures and the requirements of lifting heavy equipment.

As is abundantly clear from the above cited examples of injuries and other health hazards directly related to the mushroom picking operations in Michigan and Pennsylvania, the continued failure to regulate the safety factors of ladders and catwalks in the mushroom growing industry will continue to cause severe disablement of workers early in life.

Unless the Standards Advisory Committee on Agriculture, recommends to the Secretary a standard for ladders and catwalks in the mushroom industry, mushroom workers will be irreparably harmed in that they will be compelled to endure severe pain and will at an early age become physically disabled and thereby compelled to depend upon public assistance to support their families, since they will no longer be able to work.

Respectfully Submitted,

[signed]

Phyllis A. Reha, Supervising Attorney
Michigan Migrant Legal Assistance Project, Inc
110 1/2 N. Michigan Ave.
Saginaw, Michigan 48502

(Note: Exhibits which were attached to the testimony have been omitted.)

APPENDIX C

SUMMARY OF REPORT AND RECOMMENDATIONS ON THE STATUS OF MUSHROOM WORKERS IN MICHIGAN

1976

Prepared by

State of Michigan

Department of Civil Rights

A fact-finding investigation into the status of mushroom workers in Michigan was conducted by the Michigan Department of Civil Rights in 1975–76. The following is a summary of its findings:

The Recruitment of Mushroom Workers:

1. Sixty percent of the workforce is Spanish surnamed.
2. Of the Spanish surnamed workers, sixty percent are from Puerto Rico and thirty percent from border areas in Texas. Eighty percent speak only Spanish.
3. Seventy percent of the Puerto Rican workers were recruited by a relative or friend as were 80 percent of the Mexican workers. The remainder were recruited by labor contractors.
4. The Puerto Rican government and the U.S. Department of Labor are investigating to determine if laws have been violated in recruitment and employment. 2*Housing*
1. The majority of mushroom workers live in grower-provided housing: 97 percent in barracks, 3 percent in trailers. Charges of $3 per week in barracks and $25.75 per week in trailers are deducted from the employee's paycheck.
2. Barracks house 3 to 6 persons per room with 15 to 60 workers per building. They have a central kitchen facility, dining area, 2–4 flush toilets, and 2–4 showers. Inadequate clothing storage facilities.
3. The Michigan Department of Health ruled that mushroom workers are not migratory workers and their housing need not be licensed under the migrant labor camp regulations.

Occupational Health & Safety

1. Efforts to establish health and safety standards for the mushroom industry have not been successful.
2. Safety hazards include: slippery ladders and catwalks, wet floors, electric shock.
3. Health hazards causing: respiratory dysfunctions and allergies, asthmatic dysfunctions, mushroom workers' lung and skin infections.

Wage and Fringe Benefits

1. Despite State law which requires a minimum wage and workmen's compensation, some workers claim they receive less than the minimum and have been unable to receive workmen's compensation benefits.
2. There is no requirement to pay an overtime premium; workers' records reveal they work 46–70 hours per week.

Education

1. Adult workers have less than an eighth grade education and are Spanish speaking. Efforts to establish an adult education program were opposed by growers.
2. The Michigan Department of Education does not classify mushroom workers or their children as migrants and therefore they are not eligible under the provisions of the Migrant Education Act.

Social Services

1. The Department of Social Services does not define mushroom workers as migrants; they are not eligible for Emergency Assistance. The Department must review cases individually to determine services for which mushroom workers may be eligible.
2. Single men living in dormitories are not eligible for food stamps.

Recommendations

1. Amend Public Act 289 to include mushroom workers' housing in the Migrant Camp Licensing Act.
2. The Michigan Departments of Public Health and Labor should adopt and promulgate standards designed to eliminate health and safety hazards on the mushroom farms.
3. The Department's Program Services Division should assess the educational needs of the mushroom workers and formulate programs with local school officials.
4. The Program Services Division, together with local officials should establish bilingual/multicultural regional service centers.
5. The newly organized Michigan Spanish Speaking Affairs Commission should develop a comprehensive State program to remove the current ambiguities affecting mushroom workers.

Appendix D

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

APR 26 1976

Grace Alpern, Chairperson
Pennsylvania Advisory Committee to the
U. S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, NW - Room 510
Washington, DC 20037

L. Coleman Dorsey, Chairperson
Delaware Advisory Committee to the
U. S. Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, NW - Room 510
Washington, DC 20037

Dear Chairpersons Alpern and Dorsey:

This will acknowledge your letter of April 9, 1976, requesting information regarding the application of the National Labor Relations Act, as amended, to mushroom workers.

Before responding to the questions posed in your questionnaire, some general comments regarding the scope and function of the National Labor Relations Board in administering the National Labor Relations Act, as amended, may be helpful. The NLRB has two primary functions: (1) to conduct secret ballot elections to determine whether employees wish to be represented by a labor organization, and (2) the investigation and processing of unfair labor practice charges.

Under Section 2(6) and 2(7) of the Act, the NLRB's jurisdiction extends to all cases involving enterprises whose operations affect interstate commerce. This general statement must, however, be read in light of certain statutory limitations imposed on the Board's exercise of jurisdiction under Section 2(2) [not relevant here] and 2(3). Thus, Section 2(3) of the Act, which defines the term "employee," specifically excludes, among other categories, agricultural laborers from the coverage of the Act.

In connection with the exclusion of agricultural laborers from the Act's definition of "employee," the Board is guided by the definition set forth in Section 3(f) of the Fair Labor Standards Act which reads, in pertinent part, as follows:

> . . . agriculture includes farming in all its branches and among other things includes . . . the production, cultivation, growing, and harvesting of any agricultural . . . commodities . . . and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

In addition, this definition of agriculture has been held to have two distinct meanings, the primary meaning referring to actual farming operations, the secondary definition referring to "practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations." This exemption is limited, however, to farms where "all such commodities are the products of that farm." In other words, the exemption of agricultural laborers is limited to those processors who deal exclusively with their own goods and does not extend to an employee who deals in products raised or produced by other farmers. Accordingly, the question as to whether mushroom workers are subject to coverage under the National Labor Relations Act, as amended, depends in the first instance on (1) whether they are employed by employers whose operations affect commerce, and, if so, (2) whether they are "employees" as defined by the Act.

As a general rule, questions as to whether employers come under the Act's jurisdiction or individuals meet the Act's definition of "employee" are answered on a case-by-case basis. These cases may arise in the context of a question concerning representation or an unfair labor practice allegation. In either case, a detailed investigation is made

which may or may not include a formal hearing regarding these threshold questions. For example, in Michigan Mushroom Company, 90 NLRB 774, the Board held that employees who grow and cultivate mushrooms are agricultural laborers and dismissed a petition seeking an election among this group of individuals.

The questions posed in your questionnaire have been answered in light of the general comments above regarding the operations of the NLRB in administering the National Labor Relations Act, as amended. Please do not hesitate to contact me if any of our responses require clarification or if there are any other data we can supply.

Sincerely,

/s/ BETTY SOUTHARD MURPHY

Betty Southard Murphy
Chairman

Appendix E

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210

Office of the Assistant Secretary

16 DEC 1976

Mr. Jacob Schlitt
Regional Director
United States Commission
on Civil Rights
2120 L Street, N.W., Room 510
Washington, D.C. 20037

Dear Mr. Schlitt:

This is in response to your letter of October 14, 1976, addressed to Ms. Jeanne Werner, transmitting a copy of your draft report of the hearing held by the Pennsylvania and Delaware Advisory Committees to the United States Commission on Civil Rights concerning protection for mushroom workers.

I have reviewed the information contained in the draft report which pertains to the Occupational Safety and Health Administration (OSHA) and believe the most appropriate way to respond to the report is to provide you with a more complete description of OSHA's activities which affect agriculture. I have provided a copy of your report to the Employment and Training Administration (ETA) for their review and direct comment to you on those portions of the report pertaining to the United States Employment Service.

OSHA has the responsibility of assuring, so far as possible, that every working man and woman in the nation is provided with safe and healthful working conditions by his or her employer. Under the Occupational Safety and Health Act of 1970 (the Act), covered employers have the general duty to provide a place of employment free from recognized hazards likely to cause death or serious harm. In addition, the Act provides a specific obligation that such employers comply with job safety and health standards issued by OSHA. In administering the law, OSHA conducts workplace inspections to assure

compliance with these obligations. The almost universal coverage of the Act (approximately 60 million employees and over five and one-half million workplaces) necessitates that inspections be scheduled by means of a priority system. The following priority is followed: catastrophes, fatalities and imminent danger; complaints; and targeted inspections for high hazard industries. OSHA also pursues a program of consultation, information and education to assist and encourage those employers seeking to comply with the law.

OSHA currently has only six standards which apply to agricultural operations. These standards are: 29 CFR 1910.111(a) and (b), Storage and Handling of Anhydrous Ammonia; 29 CFR 1910.142, Temporary Labor Camps; 29 CFR 1910.145(d)(10), Slow Moving Vehicles; 29 CFR 1910.266, Pulpwood Logging; 29 CFR 1928.51, Roll-Over Protective Structures; and 29 CFR 1928.57, Guarding of Farm Field Equipment, Farmstead Equipment and Cotton Gins. Work is underway on a field sanitation facilities proposal, as well as a new standard on temporary labor camps.

In 1975, 1.5 percent of OSHA's total Federal inspections were conducted on agricultural sites. This represented a substantial increase in activity from 1974. For your information, I have enclosed a copy of a Field Information Memorandum which describes our program for the inspection of migrant labor housing facilities. It is expected, however, that our inspection activities will be curtailed by the 1977 Appropriations Act, which contains the following limitation:

> That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer or enforce any standard, rule, regulation or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation and employs 10 or fewer employees.

In order to supply employers and employees with knowledge of safety and health, OSHA, at the recommendation of the Standards

Advisory Committee on Agriculture, awarded a contract to Purdue University to develop various training and educational materials. These materials, including publications, slide sets, motion pictures and other materials, will be distributed by the Extension Service of the U.S. Department of Agriculture (USDA).

OSHA has been working with the USDA to develop and implement programs for the agricultural sector. In addition to the Extension Service, OSHA also has an agreement with the Animal and Plant Health Inspection Service which provides for the coordination of safety and health standards development to avoid conflicts, as well as confusion, for employers subject to regulation. OSHA also interfaces with the Environmental Protection Agency (EPA). The EPA, through its labeling standards, has responsibility for regulating working conditions for employees whose work involves the application of pesticides.

Additional programs and standards for agriculture will be developed on the basis of solid information in a manner which reflects the special nature of the agricultural work environment. In particular, it is expected that the role of the Standards Advisory Committee on Agriculture will be expanded. That committee is composed of representatives of agriculture, labor, government and the public. New efforts will, of necessity, be implemented in light of the restraints imposed by the 1977 Appropriations Act as well as the impact of other agency priorities.

I appreciate this opportunity to provide you with this information. I hope it will enable you to better evaluate how the programs of OSHA impact on the working conditions of mushroom workers. If you have any questions or if we may help you in any way, please let me know.

Sincerely,

Morton Corn

Morton Corn
Assistant Secretary of Labor

Enclosure

RA 2-3150

R W D S U

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION
LOCAL 1034, AFL-CIO

ALBERT L. MELONI, PRESIDENT
RITA MERLINO, VICE-PRESIDENT
MORRIS MALMIGNATI, SECRETARY-TREASURER

7718 CASTOR AVENUE, PHILADELPHIA, PA. 19152

October 29, 1976

Mr. Jacob Schlitt, Regional Director
Mid-Atlantic Regional Office
2120 "L" Street, N.W., Room 510
Washington, D. C. 20037

Dear Mr. Schlitt:

As per your letter dated October 14, 1976, I am taking this opportunity to respond to some remarks indicated in the draft report:

1. The $3.00 minimum rate I quoted reflects an incentive bonus of 3 1/2-cents to 7-cents for each basket of mushrooms pulled. The minimum earned in this bonus plan is 28 1/2-cents per hour in addition to the regular hourly rate (spelled out in our agreement).

2. Mushroom pickers have their own bi-lingual shop stewards, negotiating committees, grievance committees and attend regular meetings with the company and the union to discuss and resolve mutual problems. There is no language gap in our union. We have interpreters and translators available at all times.

3. We think that we are the only union in this area, along with the company, to have our contracts printed in both English and Spanish and distributed to each member (I am enclosing copies).

4. We have also negotiated a pension plan for our mushrooms workers.

5. Meetings are called quarterly, with arrangements made for car pools, plus the fact that we rent a hall close to their place of employment.

6. Our two business agents have represented the mushroom workers in that area for many years and are very militant and experienced where our members are concerned.

Local 1034 is proud of the last contract negotiated on behalf of the mushroom workers. This settlement provides our members with benefits comparable to or better than other small industries in this area. Local 1034 has taken the mushroom worker from a point where he/she had no benefits, no security, low wages and was at the mercy of the employer.

Today, that is not the case. Organizing mushroom workers is made more difficult, because they are still considered agriculture workers and do not come under the umbrella of various government agencies as other industries. This, plus the fact that imported mushrooms into the U. S. by Korea, Taiwan and other countries will have a serious impact on future negotiations for these workers.

Local 1034 is very active in this area and has appeared many times before the tariff Commission to give testimony. We now have entered into a joint venture with companies involved, to get legislation passed to correct this problem. I am enclosing some information regarding this critical problem.

Local 1034 has actively supported and has been solicing contributions for a drug and alcoholic rehabilitation center called CASA NUEVA, located in the mushroom area. Local 1034 is labor's representative on a committee composed of many prominent citizens in the mushroom area which concerns itself with the "Puerto Rican: Bridging the Gap."

I thought I should, in all good conscience, bring these matters to your attention. I also enjoyed appearing before the Commission and wish to co-operate in any way that I can.

Sincerely yours,

Albert L. Meloni
President

ALM:js

Encl.

Appendix G

AMERICAN MUSHROOM INSTITUTE

P.O. BOX 373 · KENNETT SQUARE, PENNSYLVANIA 19348 · TEL: (215) 444-0700

AMERICAN Mushroom INSTITUTE

XXXXXXXXXX
EXECUTIVE DIRECTOR

November 4, 1976

Mr. Jacob Schlitt
Regional Director
United States Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W. - Room 510
Washington, D.C. 20037

Dear Mr. Schlitt:

On behalf of myself and the American Mushroom Institute, I am pleased to respond to your letter of October 14, 1976. I should point out, however, that we do not consider this response to be a "verified answer to the report or relevant portions there of" nor do we intend by our response to "plainly and concisely state the facts and laws constituting the person's own reply or defense to the charges or allegations contained in the report". (Sec. 702.18 of the Rules and Regulations of the U.S. Commission on Civil Rights).

Indeed, we are having a considerable amount of difficulty in understanding how a public meeting, held by an advisory committee to the U.S. Commission on Civil Rights generates a "report of the Commission" to which our rights under (Sec. 702.18) apply, since an advisory committee "shall not, in conjunction with such public meetings, or otherwise, purport to conduct a formal hearing or adversary proceeding of any type, take oral testimony under oath, or issue subpoenas". (Sec. 703.8 of said Rules and Regulations.)

Given your position on the apparent applicability of (Sec. 702.18), (Commission Reports) to the "hearing in West Chester, Pennsylvania on January 22 and 23, 1976", it is equally difficult for us to understand why you have consistently refused to furnish us with a transcript of the "hearing" since Sec. 702.14 (Transcript of Commission Proceedings) entitles us to a copy of said transcript.

Finally, how any person can give a verified response to a third party's obviously unverified summary of what actually transpired and what the transcript obviously reflects, without the benefit of the actual transcript is beyond us. In effect, the actual defamation, degradation, or incrimination may not even be contained in the facts as reflected by the transcript, but rather only in the willful or negligent misrepresentation of those facts by an author unskilled in the technicalities of mushroom growing.

Here then is our unverified response to your summary of the facts, as contained in the excerpts. We do not intend such response to be a waiver of our

right to respond to any other aspects of the report which might defame, degrade or incriminate us and which a copy of the transcript to which we are entitled would have disclosed.

In the first barred paragraph, a misstatement occurs where the author states that the industry, "received low-interest Economic Injury Loans through the Small Business Administration, amounting to $15,000,000". What was said at the hearing was that the President authorized the allocation of $15,000,000 for that purpose. In actuality, only about 4.5 to 5 million dollars was loaned to the industry by the Small Business Administration.

In that same paragraph, it was also stated that, "the industry was hopeful of getting a tariff rate quota enacted, designed to cut imports of mushrooms from the current 40 percent to 25 percent." That statement does not say 25 percent of what, and is further inaccurate because a tariff rate quota does not serve to quantitatively limit imports. We explained at the hearings that about 40 percent of the processed mushroom market place was then taken up by imported canned mushrooms and that we favored a tariff rate quota which would limit the volume of mushrooms flowing to the United States at the current rate of duty, but not prohibit as many mushrooms as foreign countries want to send here at an expanded duty rate.

Furthermore, the U.S. International Trade Commission did not fully, "refuse to grant this form of relief." It was not a blanket refusal at all, but rather a recommendation to the President that adjustment assistance would be a more appropriate remedy under the circumstances. They did recognize that the industry had suffered injury at the hands of the imports, and one commissioner actually recommended a tariff rate quota.

Additional incorrect conclusions are contained in your summary entitled The Product. Growing houses are more normally maintained at a comfortable 60 degrees, not 55, and we seriously question your reference to, "the need for dark, damp, cold environment..." which you allege, "restricts adequate lighting and ventilation for workers." In order for mushrooms to grow, they need continuously changing fresh air, so ventilation is probably better than "average". Mushroom houses are constantly receiving fresh air during the picking stages, and in our opinion, the houses are quite comfortable in temperature, in contrast to your reference to how "cold" it is.

I'm sure you have already received letters from Vincent Versagli at Keystone Mushroom Farms and Lynn Rickart at Grocery Store Products. Copies of both letters are enclosed. They are self explainatory concerning the errors and lack of discretion in your recollection of their statements. I need not comment further on those.

We again respectfully request a copy of the transcript pursuant to the previously discussed Rules and Regulations.

Sincerely Yours,

Timothy A. King
Executive Director

TAK:rap

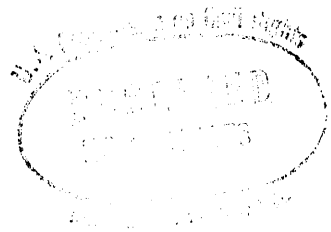
Keystone Mushroom Farms, Inc.
P. O. BOX 191
COATESVILLE, PENNSYLVANIA - 19320

GROWERS OF QUALITY MUSHROOMS

PHONE 215 384-8212

October 29, 1976

Mr. Jacob Schlitt
Regional Director
United States Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, N.W. - Room 510
Washington, D. C. 20037



Dear Mr. Schlitt:

Re: Mushroom Workers Report

The paragraph quoting my statement as written "Mushroom growers are aware that they have employed illegal aliens." should read as follows:

"Mushroom growers are aware that they <u>may</u> have employed illegal aliens."

It has never been my intent to state that mushroom growers wilfully employ illegal aliens. I also know that Immigration Authorities have picked up illegal aliens at various mushroom farms including our own, therefore there would have to have been illegal aliens employed.

We require a Social Security card of all applicants for employment, and we are informed that proof of citizenship is required to obtain a Social Security card.

Sincerely,

KEYSTONE MUSHROOM FARMS, INC.

Vincent Versagli

Vincent Versagli
Secretary - Treasurer

VV/hrc

Appendix I

GSP GROCERY STORE PRODUCTS COMPANY WEST CHESTER, PA. 19380 215/696-6300
SUBSIDIARY OF THE CLOROX COMPANY

November 4, 1976

Mr. Jacob Schlitt
Regional Director
United States Commission on Civil Rights
Mid-Atlantic Regional Office
2120 L Street, NW - Room 510
Washington, D. C. 20037

Dear Mr. Schlitt:

Thank you for giving us an opportunity to review and comment on our statements which are to appear in the report to be issued by the United States Commission on Civil Rights.

I would like to point out that we had no prior knowledge that the 35 aliens removed from our housing by Immigration authorities were illegal. These employees were screened according to our usual practice, which you report on page 81 of the planned report. We became aware of their illegal status only at the time of the action by Immigration officials.

In this regard, therefore, I suggest that your statement "Mushroom growers are aware that they have employed illegal aliens." may be misleading. We became aware after the fact, and did not knowingly hire or retain illegal aliens on the payroll.

I strongly request, therefore, that the report clarify what the situation was at Grocery Store Products Company. Thank you for your consideration.

Sincerely yours,

L. W. Rickard
Manager of Growing

LWR:tc

Appendix J

FARMWORKERS NEEDS, GOVERNMENT PERFORMANCE

REPORT OF THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA FOR 1976

Prepared by Cristobal Bonifaz

A. Summary

Conditions of farm laborers in Pennsylvania hardly changed in 1976. Workers are still plagued by a series of handicaps unknown and unheard of, by industrial employees. Small efforts of concerned state officials and the community at large to implement changes, were totally aborted in 1976 by state representatives and governmental officials that do not represent or care about this small migrant non-voting constituency.

B. Pennsylvania Legislative Branch

Efforts to pass significant farm labor legislation in Pennsylvania were thwarted by anti-migrant forces at the command of Columbia county representative Kent Shellhammer. The Schapp administration remained neutral but acknowledged Shellhammer democratic political power in PA by appointing him Secretary of Agriculture. The need for strong legislation remains as desperate as ever, with four areas listed below heading the list.

1. Wages

The heart of the economic problem for agricultural laborers is not as much the level of the hourly wage, even though the federal minimum ($2.20/hr) is lower than that for industrial workers, but the totally unpredictable length of the work week and the unpaid time that must be spent traveling from farm to farm. Workers hired to pick mushrooms may work 2 or 4 or 10 hours per day depending on the availability of the crop, while those hired to pick tomatoes or apples may spend idle days waiting for a break in the weather. Minimum hourly wage levels mean therefore very little to migrants. At the end of each season the possible earnings remain as unpredictable as ever. Legislative efforts in this area should be directed in both federal and state legislatures towards passage of minimum $/week or minimum $/month, in addition to minimum $/hour. Only when such legislation has passed, migrants will begin to emerge from their abject and total poverty.

2. Crew Leaders

The crew leader system of labor supply is a remnant of 19th century slavery and must be abolished. Crew leaders offer hypocritical paternalistic protection to migrants away from their friends or relatives, in return for most of the mirgant wages taken back one way or another. Crew leaders are assets to farmers and growers. Farmers have to speak only to one man, and can remain totally removed from the the miseries of those picking their crops. Federal laws have attempted to deal with this problem, by requiring licensing of labor contractors. Such laws however are not enforced. In spite of continuous abuse and complaints by social workers and laborers, not a single labor contractor has lost its license in Pennsylvania, where the crew leader situation is totally out of control. There exists a powerful cadre of rich crew leaders in PA that control close to 1/6 of the total state migrant force. It should not be a surprise to anyone that the main objection of farmers and growers in Pennyslvania to Senate Bill 208 killed in the state legislature in 1976 was the crew leader registration chapter. As one Pennsylvania apple grower clearly put it, "If you pass a crew leader registration act in Pennsylvannia, my foreman will move to New Jersey." Even though crew leader registration is a step in the right direction, what is needed is a law banning the system. A person hiring another to do a job cannot possibly be the source and only recourse of all the employee's needs, including housing, transportation, medical supplies, etc. Allowing such a system to continue any longer, with the poorest of the poor, is a severe flaw in a society committed to different ideals.

3. Housing

Housing for migrants in Pennsylvania is theoretically licensed by the Department of Environmental Resources. Under community pressure DER extended the licensing in September of 1976 to the mushroom workers barracks.

DER inspections however appear to be an exercise in futility. ACLU conducted a tour in the summer of 1976 of camps in the Tomato Belt under DER inspection. At Wehry's camp there were people sleeping on a bus and in cots outside the concrete brick garages. Rooms of 50 square feet contained as many as six people. At a camp in Mainville conditions were appalling. The crew leader keeps in one of the migrant rooms a trained attack dog, to retrieve any migrants that may stray from the camp. Bathroom for 35 men and women was an infectious, smelling, filthy ditch with four toilets and no sewer.

DER started mushroom camp inspections in October of 1976. Inspectors were denied access to the worst camps by the growers, and DER is incapable of any action. Strong inspection statutes with guaranteed inspector access are essential provisions of any legislative action.

4. Access

Access to migrants in Pennsylvania by friends, visitors or other migrants is still as in the time of slavery, a privilege granted by the farmer. At Faught's camp in Millville crew leader Leroy Nelson makes a point of receiving visitors with a 38 caliber pistol on his chest.

Social workers under CETA Title III contract to help migrants, visit the camp only at the grace of the growers and in constant fear of alienating them and losing their privileges without which they cannot perform their assigned jobs. Farmers and growers are fully convinced that it is their right to deny access to people visiting migrants on their property and they do so at will. Legislation with satisfactory access clauses is desperately needed in Pennsylvania.

5. Tenancy Rights

Farmworkers in PA live "no cost" on the premises provided by the farmer or grower. Paying rent for their quarters will automatically make farmworkers fall under landlord-tenant laws. Enforcement of these laws will mean sufficient notice to vacate the premises and other advantages currently enjoyed by all other PA residents. Tenancy rights must be made a law for farmworkers whether they pay rent or not.

C. Pennsylvania Executive Branch

1. Department of Community Affairs

Federal Government monetary allocation for migrants in Pennsylvania amounts to 1.1 million under the comprehensive education training act and $125,000 under migrant health. The PA legislature does not allocate funds to migrant programs. In 1976 CETA money was administered by the Department of Community Affairs and Migrant Health money by the Department of Health. DCA spent some of this CETA money ($100,000) in 1976 in a study conducted by American Friends Service Committee. The study recommended CETA administration by farmworkers groups. The secretary attempted to carry out the recommendation, but was turned down by the Federal Government which in turn granted CETA administration to an organization controlled by farmers and growers.

The difficulty with CETA funds is however that the money is allocated primarily to re-train migrants into jobs that may or may not exist. Such programs even though they sound excellent on paper have only token effect on the lives of the migrant population. Monetary amounts as limited as this, will serve farmworkers better if used in a more direct manner.

CETA employees could take over crew leader roles under supervision by the Department of Labor. Under CETA grants transportation, salary supervision, and contracts with growers could be set up without exploitation. This type of allocation however takes a little imagination and deals with problems directly. There is no evidence this is the intention of the Federal Government.

DCA distributed CETA grants last year through seven subcontactors. Discrepancies on how each subcontractor spent their funds are tabulated in Appendix I. [Not included here.] The situation in 1977 is far worse than in 1976. The farmers organization adminstering the funds is under the impression that they are distributing their own money, and as of this date, have refused to provide ACLU with a breakdown of their projected expenditures.

2. Department of Health

Migrant Health money allocation for Pennsylvania has decreased steadily in the last four years: $300,000—1973, $212,000—1974, $167,000—1975, $125,000—1976. Explanation for this decrease is given in the letter Martin-Schewiker (Appendix II). [Not included here.] In 1976, DCA supplemented the allocation with $60,000 from CETA funds. As of the date of this report no firm commitment had come forward from 1977 CETA administrators that this needed supplement will be available. There is no question that migrant health allocation for PA must be maintained close to the 1974 allocation for a minimum program.

D. Judiciary

Justice for migrants in PA is the same as justice for the poor, aggravated only from the fact that local judges place outrageous bails on migrants because of their transitory nature. One worker spent 6 months in Chester County jails because he could not raise a $2500 bail. Charges of stealing a battery were dropped after that time since the case never came to trial. Stories like this are innumerable and occur often. With the notorious exemptions of certain judges widely known in Pennsylvania that conduct themselves in particularly criminal manner towards migrants, the heart of the problem is the lack of legal protection for the poor, arrested on minor criminal charges. Public defenders that cannot communicate with defendents and to whom these cases are a nuisance, are appointed by the courts. With the crowded situation on the courts of Pennsylvania the easiest path for everybody, except the taxpaper is to keep the defendants in jail for six months. After this period they are released because there is a law in PA, that trial scheduling must take place within six months of incarceration. In addition to bail reform laws, legal services must be made to take on the task of defending migrants, arrested for minor criminal charges.

E. Federal Government Performance

1. OSHA, The Department of Labor and Undocumented Workers

The Federal Government in 1976 acted in totally irresponsible manner in matters dealing with migrants in PA. OSHA washed its hands of migrant housing inspections, federally registered crew leaders were allowed to continue their rampage, Nixonian labor department representatives ignored the recommendation of the state government, the U.S. Civil Rights Commission, legal services and American Friends Service Committee and proceeded to grant without explanation CETA Title III administration to a farmer controlled organization. But all these irresponsibilities were only a scratch in the surface. As customary the Federal Government let another year go by without attempting to deal with the greatest problem agricultural labor has to face; the undocumented worker.

Mexican workers to the delight of farmers and growers, continued to take over the agricultural labor in Pennsylvania, both from the Spanish-speaking American and the dwindling deep South migrant that comes North to pick apples and tomatoes. The undocumented alien is the ideal worker for farmers and growers, comparable only to 19th century cotton pickers or India's untouchables. They represent submission, hard work, inability to better their lives, and constant fear. Tragically, they also represent the greatest barrier against unionism or protest. It is a small wonder that the agricultural lobby in Washington headed by migrant user senators has made it impossible for any legislation to pass.

The problem however has reached such astonishing dimensions that Americans will soon have to fact the fact that in spite of espoused rhetorical ideals and welfare laws, the vetgetables, fruits and crops they eat, have been picked by a shadow mass of human beings, moving across the states from crop to crop in constant fear and with no rights whatsoever.

The difficulty of dealing with the problem is centered not only in the desirability of the worker from the grower's viewpoint, but in the inability of farmworkers and farmworkers advocate organizations to suggest solutions. On one hand, wages and conditions can be kept low with undocumented workers, on the other undocumented workers are human beings emerging from such complete poverty, despair and hunger that they risk their lives to cross the border and work at the mercy of crew leaders and growers. Various proposals to deal with the problem have been put forward. None however offer satisfactory solutions. Rodino's HB–982 will punish employers for hiring

illegal aliens, but will also exempt them if the workers sign cards stating they are in the country legally. Kennedy S–561 will grant amnesty to those in the country illegally more than three years. The bill does not deal with the millions that will continue to stream across the border. Mexico's population has risen from 14.5 million in 1920 to 63 million now, and is projected to have 125 million inhabitants in the year 2000.

2. Undocumented Workers Facts and the Author's Recommendations

Formulation of satisfactory solutions to this enormous problem can only come from acceptance of the harsh realities.

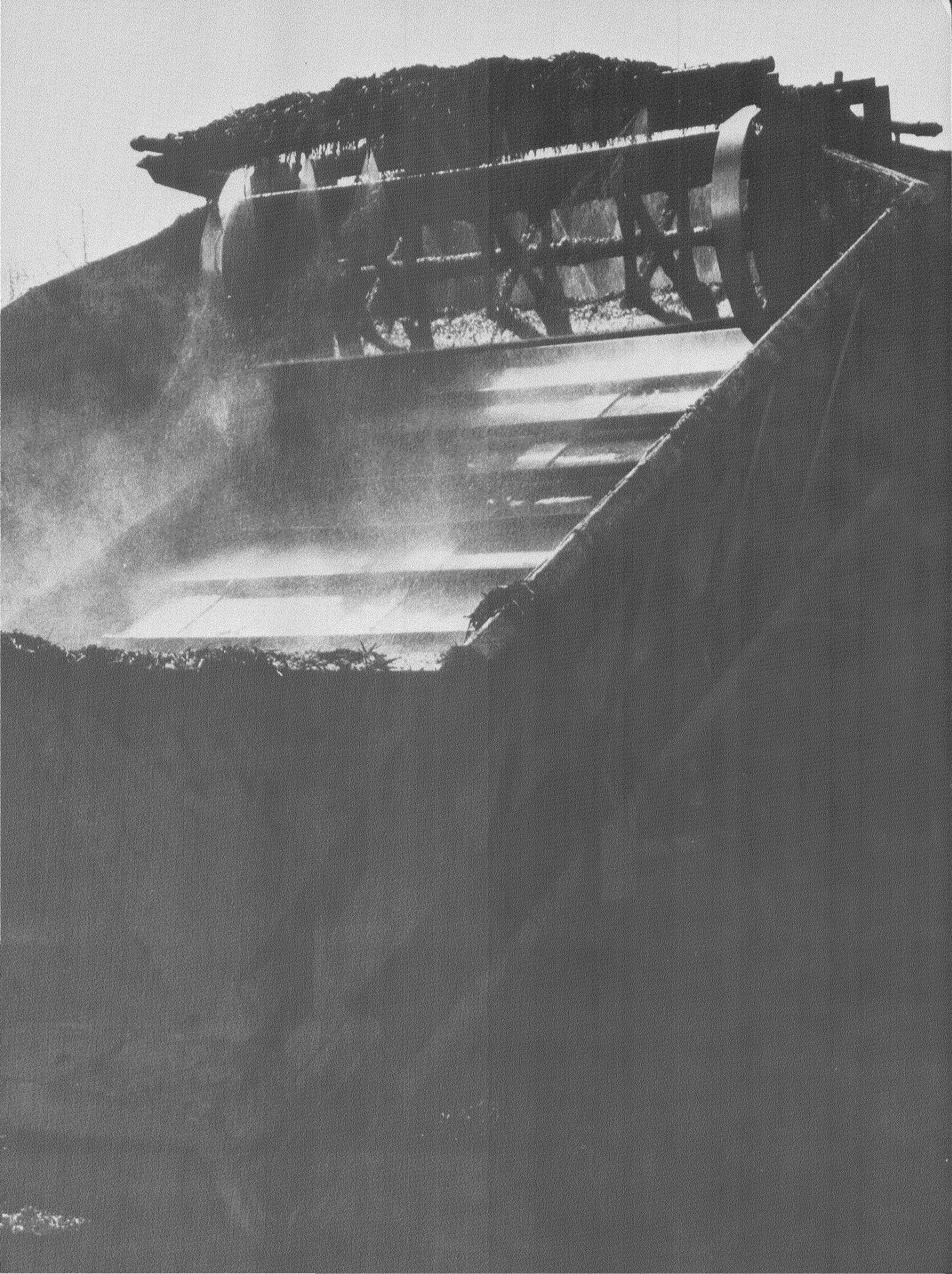
- Mexican workers are here because no matter how mistreated, they are at least not hungry, and once in a while can help their relatives in Mexico with a few dollars. Nothing is going to change this fact anytime soon.
- Employers hire them because their profits are greater, either because they tend to work harder or they are willing to work under conditions most Americans would not face.
- Every employer is fully aware when a worker is here illegally. They learn about the illegality from the workers themselves or from other employees. Denial of this fact by farmers and growers is pure monumental hypocrisy.
- The majority of Spanish-speaking or Southern workers do not resent the Mexican illegal. There is a tremendous bond among poor people trying to survive together. In addition, citizenship status for migrants are meaningless. People born in buses or trailers that spend their lives traveling with no place to call home, always fighting to keep up with debt after debt, with no hope to pull their children out of the horrendous migrant stream, have absolutely no concept of the rights to which they are entitled.
- Civil libertarians that would cry wolf at any meaningful legislation that would punish employers for hiring illegal aliens (identity card specter), have never uttered a hmm about HR–13342 (Law in 1974) that punishes crew leaders ($10,000 fine—3 years) for hiring illegal aliens. What is the difference?
- If apple picking or mushroom picking commanded wages of $10/hr with guaranteed 40 hr. work weeks, the illegal alien problem will disappear. The argument that Mexican farmworkers in the U.S. (5 million by INS estimates) are the cause of the unemployment situation in the U.S. is pure hog-wash. Any unemployment or welfare check is higher than most after crew leader pay checks.
- In the end the culprit of the illegal alien force in the U.S., is none other than Mr. Average American that wants to eat apples for 39 cents/lb, oranges for 10 cents apiece, lettuce for 59 cents/head, etc. Americans will never accept voluntarily doubling or tripling of their food bills merely to bring dignity to crop pickers.

The solution therefore lies in a package law that will not only allow farmworkers the same rights to dignity other Americans have, but also will shift the blame from the poor and miserable to those who use them, for a few extra profit dollars. Any law aimed at solving the problem will have to deal with four items simultaneously:

- There is no question that punishment of the employer is a necessity. Such law does not mean that Americans will have to carry identity cards. Such law will simply mean as HR–13342 that notorious employers of illegal aliens can be brought into a court of law, where knowledge of the illegality of the workers will be demonstrated.
- Immigration's random game of apprehension and deportation of token aliens must stop. These tactics only alienate minority communities. Immigration efforts must be directed at building stasfactory court cases against employers.
- All workers must be treated equally, and be entitled not only to due process of law, but also to protection by the State in case of victimization. The Damocles sword of a call to immigration must not hang over anyone's head.
- Last, but most crucial, agricultural labor must be granted satsifactory unionizaton protection applicable to their migratory and short term employment status. Such is the right of every other American citizen. Only when such time comes to pass will agricultural labor become a dignified way of life, and not the peonage that it is now.

The problem of the illegal alien will simply evaporate if a federal law encompassing the four points mentioned above is passed and enforced.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1977 727-784/463



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